16-163

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 79.

EDWARD G. MASON, APPELLANT,

vs.

THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED OCTOBER 16, 1879.

SUPREME COURT OF THE UNITED STATES.

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1 Pleas in the circuit court of the United States for the northern district of Illinois, held at the United States court-rooms in the city of Chicago, in the district aforesaid, before the judges, hereof on Tuesday, the second day of January, in the year of our Lord one thousand eight hundred and seventy-seven, and of our Independence the one hundred and first.

WILLIAM H. BRADLEY.
Clerk.

THE NORTHWESTERN MUTUAL LIFE INSURance Company
v.
BENJAMIN F. MURPHY, HARRIET D. MURPHY, Edward G. Mason, Robert E. Jenkins, as assignee, &c., First National Bank of Morrisville, The Troy City National Bank, American Exchange National Bank, The Central National Bank, The Nassau Bank, The National Webster Bank, First National Bank of Easton, William F. Weld, The First National Bank of Rockville, The First National Bank of Wilkesbarre, Benjamin F. Allen, and Hoyt Sherman, as assignee, &c. } In chancery.

2 NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that on the 10th day of December, A. D. 1875, came the said complainant, The Northwestern Mutual Life Insurance Company, by Messrs. Hoyne, Horton and Hoyne, its solicitors, and filed in the office of the clerk of the circuit court of the United States, for the northern district of Illinois, at Chicago, in the district aforesaid, its bond for costs and bill of complaint in said entitled cause, which said bond for costs and bill of complaint are in the words and figures following, to wit:

Bond for costs.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

Circuit court, December term, A. D. 1875.

THE NORTHWESTERN MUTUAL LIFE INSURance Company
v.
MURPHY ET AL. } In chancery.

We enter ourselves security for costs in this cause and promise to pay all costs which may accrue to the opposite party in this action, or to any of the officers of this court; and in default of payment by the plaintiff of any costs ordered or adjudged to be paid by it, hereby agree and stipulate that execution may issue against our property for any costs taxed against it. Dated this eighth day of December, A. D. 1875.

HOYNE, HORTON AND HOYNE.

(Endorsed:) Filed Dec. 10th, A. D. 1875. Wm. H. Bradley, clerk.

3 In the circuit court of the United States for the northern district of Illinois.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

To the honorable the judges of the circuit court of the United States for the northern district of Illinois, in chancery sitting:

The Northwestern Mutual Life Insurance Company, a corporation created and existing under and by virtue of the laws of the State of Wisconsin, and having its principal office in the city of Milwaukee, in the State of Wisconsin, and being a resident and citizen of said last-named State, brings this its bill of complaint against Benjamin F. Murphy and Harriet D. Murphy, his wife, Edward G. Mason, Robert E. Jenkins, as assignee in bankruptcy of the estate of Benjamin F. Murphy, bankrupt, who are all citizens of the said State of Illinois and residents of said district, First National Bank of Morisville, The Troy City National Bank, American Exchange National Bank, The Central National Bank, corporations created and existing under and by virtue of the laws of the United States, and The Nassau Bank, a corporation created and existing under and by virtue of the laws of the
4 State of New York, all of which corporations are citizens of said State of New York; The National Webster Bank, The First National Bank of Easton, corporations created and existing under and by virtue of the laws of the United States, and citizens of the State of Massachusetts; William F. Weld, a citizen of said last-named State; The First National Bank of Rockville, a corporation created and existing under and by virtue of the laws of the United States, and a citizen of the State of Connecticut; The First National Bank of Wilkesbarre, a corporation created and existing under and by virtue of the laws of the United States, and a citizen of the State of Pennsylvania; Benjamin F. Allen, a citizen of the State of Iowa; and Hoyt Sherman, as assignee in bankruptcy of the estate of Benjamin F. Allen, bankrupt, a citizen of said State of Iowa, defendants; and thereupon your orator complains and shows unto your honors that prior to the seventh day of May, in the year of our Lord one thousand eight hundred and seventy-four (A. D. 1874), the said defendants, Benjamin F. Murphy and Benjamin F. Allen, applied to your orator for the loan of the sum of twenty thousand dollars ($20,000.00) in money; that your orator consented to make such loan upon the due execution and delivery thereof by
5 the said Benjamin F. Murphy and Benjamin F. Allen to your orator of that certain bond, and the due execution, acknowledgment, and delivery by the said Benjamin F. Murphy and his said wife of that certain mortgage deed hereinafter set forth, to which the said defendants, Benjamin F. Murphy and his said wife and Benjamin F. Allen consented; whereupon your orator did advance, loan, and pay over to them, said Benjamin F. Murphy and Benjamin F. Allen, the said sum of twenty thousand dollars ($20,000.00) lawful money of the United States.

Your orator further shows unto your honors that in order the better to secure the repayment to your orator of said sum of twenty thousand dollars ($20,000), together with the interest thereon, said defendants, Benjamin F. Murphy and Benjamin F. Allen, made, executed, and delivered to your orator, under their hands and seals, their certain bond, in writing, bearing date and to the purport and effect following, to wit:

"Know all men by these presents that we, Benjamin F. Murphy and Benjamin F. Allen, are held and firmly bound unto the Northwestern Mutual Life Insurance Company in the sum of forty thousand dollars lawful money of the United States of America, to be paid to the
6 said The Northwestern Mutual Life Insurance Company, or to its certain attorneys, successors, representatives, or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, and each and every of them, jointly and severally, firmly by these presents. Sealed with our seals and dated the seventh day of May, in the year of our Lord one thousand eight hundred and seventy-four."

"The condition of this obligation is such that if the above-bounden Benjamin F. Murphy and Benjamin F. Allen, their heirs, executors, administrators, or any of them, shall well and truly pay, or cause to be paid, unto the above mentioned The Northwestern Mutual Life Insurance Company, or to its certain attorneys, successors, representatives, or assigns, the just and full sum of twenty thousand dollars at the expiration of five years from the date of these presents, with interest thereon until paid, at the rate of nine per centum per annum, payable semi-annually on the first day of January and of July in each and every year, both principal and interest payable at the office of said company, in the city of Milwaukee, in the State of Wisconsin, and shall, on or before the first day of May in each and every year, procure and deliver to said company, at its office in the said city of Milwaukee, duplicate re-
7 ceipts of the proper officers for the payment of all taxes levied or assessed on the premises covered by the mortgage hereinafter mentioned for the preceding year.

"And in case of the non-payment of any sums of money, either of the said principal sum or interest thereon, or any taxes or insurance money which may become payable according to the covenants of the mortgage, bearing even date herewith, executed by the said Benjamin F. Murphy and Harriet D., his wife, to the said The Northwestern Mutual Life Insurance Company, then and in such case the whole amount of said principal sum shall, at the option of the said The Northwestern Mutual Life Insurance Company, its successors, representatives, or assigns, be deemed to have become due and payable, and the same, with interest thereon at the rate aforesaid, shall thereupon be collectable in a suit at law, or by a foreclosure of said mortgage, in the same manner as if the whole of said principal sum had been made payable at the time when any such failure in any payment shall occur as aforesaid, and if on such election being made the said Benjamin F. Murphy and Benjamin F. Allen shall then pay the whole sum above mentioned, and interest thereon as aforesaid, and the sums, if any, which shall be-
8 come due and payable according to the terms of said mortgage, without any fraud or other delay, then this obligation to be void and of no effect, otherwise to remain in full force and virtue.

"No payment of the principal of this bond shall be deemed valid except upon the joint receipt of the president and secretary of the said company.

(Signed) "BENJAMIN F. MURPHY. [SEAL.]
"BENJAMIN F. ALLEN. [SEAL.]

"The word 'nine' interlined before execution.

(Signed) "BENJAMIN F. MURPHY.
"BENJAMIN F. ALLEN."

Your orator further shows unto your honors that said bond was duly executed by the said Benjamin F. Murphy and Benjamin F. Allen, and duly delivered to your orator as security for the payment of said sum of twenty thousand dollars ($20,000), loaned by your orator as aforesaid.

Your orator further shows unto your honors that in order the better to secure the payment of the said sum of twenty thousand dollars ($20,000) so as aforesaid loaned, and in said bond mentioned, and the interest thereon, and the faithful performance of all the covenants and conditions of said bond, said defendants Benjamin F. Murphy and Harriet D. Murphy, his wife, did make, execute, duly acknowl-
9 edge, and deliver to your orator their certain mortgage-deed bearing date said seventh day of May, A. D. 1874, and being the mortgage in said bond mentioned, to the purport and effect following, to wit:

"This indenture, made the seventh day of May, in the year of our Lord one thousand eight hundred and seventy-four, between Benjamin F. Murphy and Harriet D. Murphy, his wife, of the city of Chicago, in the county of Cook, and State of Illinois, party of the first part, and The Northwestern Mutual Life Insurance Company, party of the second part, witnesseth, that the said party of the first part, for and in consideration of the sum of twenty thousand dollars to them in hand paid, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and by these presents do grant, bargain, and sell, unto the said party of the second part, and to its successors and assigns forever, the following real estate, lying and being in the county of Cook and State of Illinois, and known and described as follows, viz: The south half (½) of lot number seventeen (17), in block number twenty-six (26), in Gurley's subdivision of blocks twenty-four (24), twenty-five (25), twenty-six (26), twenty-seven (27), and twenty-eight (28), in the assessor's divison of the southwest fractional quarter (¼) of section twenty-two (22), township thirty-nine (39), range fourteen (14) east of the third
10 principal meridian; also the east one hundred and fifty (150) feet of lot number twenty-three (23), in Gurley's subdivision of blocks number twenty-five (25), twenty-eight (28), and thirty-eight (38), in the canal trustees' subdivision of the west half (½) of section twenty-seven (27), township thirty-nine (39), range fourteen (14) east of the third principal meridian: together with the privileges and appurtenances to the same belonging, and all of the rents, issues, and profits which may arise or be had therefrom. To have and to hold the same to the said party of the second part, its successors and assigns, forever. And the said Benjamin F. Murphy, for himself, his heirs, executors, administrators, and assigns, covenants with the said party of the second part, its successors and assigns, to keep the building or buildings now standing, or which may hereafter be erected on the above-described premises insured against loss or damage by fire in some solvent incorporated insurance company, so long as the moneys hereby secured shall be unpaid, to the amount of at least ten thousand dollars, and to assign and keep assigned to the said party of the second part, its successors and assigns, the policy or policies of such insurance, and deposit the same with the said party of the second part, and in case of the failure
11 to keep or continue such insurance and assignment of the policy or policies thereof, that the said party of the second part, its successors or assigns, may effect an insurance to the amount aforesaid, and the premium and expenses of such insurance shall be immediately paid to the said party of the second part, its successors and assigns, and

shall, unless so paid, be added to and deemed part and parcel of the moneys secured hereby; and that the said party of the first part, at the time of the ensealing and delivery of these presents, is the true, lawful, and rightful owner and proprietor of the said premises above described, and every part thereof, and is seized of a good, sure, perfect, and indefeasible estate of inheritance therein, in fee simple; that he hath good right, full power, and lawful authority to grant, bargain, sell, and convey the said premises and every part thereof to the said party of the second part, in manner and form aforesaid; that the said premises are free and clear from all taxes, liens, and incumbrances whatsoever, and that the said party of the first part will ever warrant and defend the same to the party of the second part, its successors, representatives, and assigns, against all claims whatsoever: Provided, always, that these presents are upon this express condition, that if said
Benjamin F. Murphy and one Benjamin F. Allen, their heirs, exec-
12 utors, or administrators, shall pay, or cause to be paid, to the said party of the second part, its successors or assigns, the just and full sum of twenty thousand dollars, at the expiration of five years from the date of these presents, with interest thereon until paid at the rate of nine per centum per annum, payable semi-annually on the first day of January and of July of each and every year, both principal and interest payable at the office of said company, in the city of Milwaukee, in the State of Wisconsin, and shall, on or before the first day of May in each and every year, procure and deliver to said company, at its office in the said city of Milwaukee, duplicate receipts of the proper officers, for the payment of all taxes levied or assessed on said premises for the preceding year, according to the condition of a bond bearing even date herewith, executed by said Benjamin F. Murphy and Benjamin F. Allen to the said party of the second part, and shall, moreover, pay annually to the proper officers all taxes which shall be assessed on the said real estate, and if the said Benjamin F. Murphy, his heirs, executors, administrators, or assigns, keep such insurance as is above mentioned, and keep the policy or policies thereof assigned as aforesaid,
then these presents, and the said bond or writing obligatory shall
13 cease and be null and void. But in case of the non-payment of any sum of money (either of principal, interest, insurance money, or taxes) at the time or times when the same shall become due, agreeably to the conditions of these presents, or of the aforesaid bond, or any part thereof, or in case of any neglect or refusal to keep said buildings insured, or the policy or policies assigned as aforesaid, then, in such case, the whole amount of said principal sum shall, at the option of the said party of the second part, its successors, representatives, or assigns, be deemed to have become due, and the same, with interest thereon at the rate aforesaid, shall thereupon be collectable in a suit at law, or by foreclosure of this mortgage, in the same manner as if the whole of said principal sum had been made payable at the time when any such failure in any payment shall occur as aforesaid, and it shall be lawful in such case for the said party of the second part, its successors, representatives, or assigns, to grant, sell, and convey the said real estate, with the appurtenances thereunto belonging, at public auction or vendue, and on such sale to make and execute to the purchaser or purchasers, his, her, or their heirs and assigns forever, good and sufficient deeds of conveyance in the law pursuant to the statute in such case
made and provided; and in case of the foreclosure of this mort-
14 gage the said party of the first part, for themselves, their heirs, representatives, and assigns, covenant and agree that they will

pay to the said party of the second part, its successors, representatives, or assigns, in addition to the taxable costs in the foreclosure suit, reasonable and customary solicitor's fees.

"The said parties of the first part hereby expressly waive and release all rights and benefits they have in said premises as a homestead under any act relating to the alienation and exemption of homesteads.

"In witness whereof the said party of the first part have hereunto set their hands and seals the day and year first above written.

(Signed) "BENJAMIN F. MURPHY. [SEAL.]
"HARRIET D. MURPHY. [SEAL.]

"The word 'ten' erased and the word 'nine' interlined before execution.

(Signed) "BENJAMIN F. MURPHY.
"BENJAMIN F. ALLEN.

"STATE OF ILLINOIS,
"*County of Cook, ss:*

"I, J. R. McQuinston, a notary public in and for, and residing in, the city of Chicago, Cook County, and State aforesaid, do hereby certify that Benjamin F. Murphy and Harriet D. Murphy, his wife; who
15 are personally known to me as the real persons whose names are subscribed to the foregoing instrument as having executed the same, appeared before me this day in person and acknowledged they signed, sealed, and delivered said instrument of writing, as their free and voluntary act, for the uses and purposes therein set forth, and thereby conveyed all their right, title, and interest in and to the premises described in said instrument, and expressly waived and released all right, claim, benefit, privilege, advantage, and exemption under any and all homestead exemption laws, so called.

"And the said Harriet D. Murphy, wife of said Benjamin F. Murphy, having been by me examined separate and apart, and out of the hearing of her said husband and the contents and meaning of said instrument, and her rights under the homestead laws of the State of Illinois having been by me made known and fully explained to her, acknowledged that she had freely and voluntarily executed the same and relinquished her dower and all right, title, and interest to the lands and tenements therein mentioned, and expressly waived and released all right, claim, benefit, privilege, advantage, and exemption under any and all homestead exemption laws so called, without the compulsion of her said husband, and that she does not wish to retract the same.

16 "Given under my hand and notarial seal this seventh day of May, in the year of our Lord eighteen hundred and seventy-four (A. D. 1874).

{SEAL OF J. R. McQUINSTON, NOTARY PUBLIC.} (Signed) "J. R. McQUINSTON,
"*Notary Public.*"

Your orator further shows unto your honors that said mortgage was duly signed, sealed, and delivered to your orator on the seventh day of May, A. D. 1874, and was filed for record in the office of the recorder of said Cook County, on the twenty-sixth day of May, A. D. 1874, and recorded in volume 380 of mortgages, on page 534, all which matters and things will appear from the originals now in the possession of your orator and ready to be produced and proven in such manner as your honors may direct.

Your orator further shows unto your honors that neither the said Benjamin F. Murphy nor Benjamin F. Allen, nor any person or persons

for them, or either of them, has or have paid the interest upon said sum of twenty thousand dollars ($20,000) since the first day of January, A. D. 1875, at the time when the same became due and payable according to the terms and provisions of said bond and mortgage and the in-
17 terest upon said sum of twenty thousand dollars ($20,000), which became due and payable upon the first day of July, A. D. 1875, remains wholly due and unpaid, and that the property hereinbefore described has been sold to the city of Chicago, because of the non-payment of the taxes due thereon, covenanted to be paid by said Benjamin F. Murphy.

Your orator further shows unto your honors that under and in accordance with the option and condition in said bond and mortgage contained, your orator did, on or about the thirtieth day of July, A. D. 1875, by reason of the default in the payment of said interest which had matured on said bond as aforesaid, elect that the whole amount of the principal sum of said bond and mortgage become and be then due and payable in pursuance of the covenants and conditions of said bond and mortgage, and your orator did on or about the thirtieth day of September, A. D. 1875, notify the said Benjamin F. Murphy and Harriet D. Murphy, his wife, and on or about the fifteenth day of September, A. D. 1875, did notify the said Benjamin F. Allen, of such election, and did demand the immediate payment of the full amount of the principal sum of said bond and mortgage, and of the interest thereon.

And your orator further shows unto your honors that said
18 principal sum of twenty thousand dollars ($20,000), together with the interest thereon as aforesaid, is now justly due and owing and unpaid to your orator.

Your orator further shows unto your honors that, on or about the first day of April, A. D. 1875, the said defendant, Benjamin F. Murphy, being then greatly involved financially, made an assignment, under his hand and seal, of all his property, real and personal, including said premises, in trust and for the benefit of his creditors, to the said Edward G. Mason, whom your orator makes party defendant hereto, which said assignment bears date the first day of April, A. D. 1875, and was recorded in the office of the recorder of said Cook County in book 492, page 452, and on or about the said first day of April, A. D. 1875, the said Benjamin F. Murphy and Harriet D. Murphy, his wife, conveyed by quit claim deed to said Edward G. Mason, the premises hereinbefore described, which said deed bears date said first day of April, A. D. 1875, and was recorded in the office of said recorder of Cook County, in book 519, on page 319, all of which facts more fully appear upon the records in said office contained. And your orator charges that whatever claim upon or title to said premises, or any part thereof, the
19 said Edward G. Mason has or may have by reason of said assignment and conveyance is subject and subsequent to the lien of said mortgage.

Your orator further shows unto your honors that, on or about the eleventh day of September, A. D. 1875, a petition was filed by said Benjamin F. Murphy in the district court of the United States for the northern district of Illinois, praying that he might be declared and adjudged a bankrupt, and on or about the eleventh day of September, A. D. 1875, he was, by said court, duly adjudged and declared a bankrupt, and on or about the sixteenth day of October, A. D. 1875, said Robert E. Jenkins, whom your orator makes party defendant hereto, was by said court duly appointed assignee of the estate and effects of said bankrupt, but your orator charges that all right, title, or interest in said prem-

ises, which has vested or may vest in said Robert E. Jenkins by means of the above proceedings was acquired by him subsequent to your orator's mortgage and is subject to the lien thereof.

Your orator further shows unto your honors that on or about the sixth day of December, A. D. 1875, it filed its certain petition in and duly obtained thereon from the United States district court
20 for the northern district of Illinois, in the matter of Benjamin F. Murphy, bankrupt, full power and permission to bring this its bill to foreclose the mortgage hereinbefore mentioned, and to make parties defendant hereto the said Benjamin F. Murphy, bankrupt as aforesaid, and said Robert E. Jenkins, assignee as aforesaid of the estate of said bankrupt.

Your orator further shows unto your honors that on or about the twenty-second day of April, A. D. 1875, the said defendant Benjamin F. Allen was, by the United States district court for the district of Iowa, duly adjudicated a bankrupt, and on or about the first day of July, A. D. 1875, the said Hoyt Sherman, whom your orator makes party defendant hereto, was by said court appointed assignee in bankruptcy of the estate of said bankrupt.

Your orator further shows unto your honors that said Benjamin F. Murphy and said Benjamin F. Allen, the makers of said bond, are wholly insolvent, and that said mortgaged premises are not of sufficient value to pay the amount due to your orator upon and under the provisions of said bond and mortgage, as hereinbefore stated and set forth.

Your orator further shows unto your honors that it has duly notified the said Edward G. Mason, the said Robert E. Jenkins, as as-
21 signee as aforesaid, and the said Hoyt Sherman, as assignee as aforesaid, of its election to declare said principal of said bond and mortgage due and payable.

And your orator further shows unto your honors that the said First National Bank of Morrisville; The Troy City National Bank; American Exchange National Bank; The Central National Bank; The Nassau Bank; The National Webster Bank; First National Bank of Easton; William F. Weld; the First National Bank of Rockville; the First National Bank of Wilkesbarre, whom it makes parties defendant hereto, have or claim to have, jointly or otherwise, either as trustees, subsequent purchaser, or incumbrancers, judgment creditors, or in some other manner, some interest in said premises or some part or parts thereof; but your orator charges that whatever claim or claims they, or either of them, has or have upon or against said premises, or any part thereof, if any, is subsequent and subject to the lien of said mortgage.

To the end therefore that the said defendants, and each of them, may be required to make full, true, direct, and perfect answer to all and singular the charges and matters in this bill contained, but not under oath, their answer, and the answer of each of them, under oath being hereby expressly waived, as fully and particularly as the though
22 the same were here again repeated, and they thereunto distinctly interrogated, and that an account may be taken by and under the decree and direction of this honorable court of what is due and owing to your orator for principal, interest, and solicitors' fees upon said bond and mortgage, together with all taxes, costs, and charges paid and incurred by your orator in the premises; and that the said defendants Benjamin T. Murphy and Benjamin F. Allen may be decreed to pay your orator what may be found due on the taking of such ac-

count, together with the costs of this suit by a short day to be appointed by this honorable court for that purpose, and that in default of such payment that said premises may be decreed to be sold by and under the direction of this honorable court and the proceeds applied in satisfaction of the costs, charges, and expenses paid and incurred in said cause, and in the making of such sale, and in satisfaction of the amount found to be due to your orator for principal and interest upon said bond and mortgage, and also in satisfaction of reasonable solicitors fees; and that all persons claiming by, through, or under the said defendants, or any or either of them, either as purchasers or otherwise, may be forever barred and foreclosed of and from all right, title, interest, claim,
23 and demand whatsoever in, upon, or against said premises, or any part thereof, and of all right and equity of redemption of said premises, and that the parties to this suit, or any or either of them, may be permitted by the said decree to bid at such sale and become purchaser or purchasers of said premises, or any part or parts thereof, and that in case the amount arising from such sale shall be insufficient to pay the costs of this proceeding, including solicitors' fees, the expenses of such sale, and the amount found due to your orator with interest thereon, that the balance remaining unpaid may be fixed by said decree as the amount to be proven against the said estates of said Benjamin F. Murphy and Benjamin F. Allen, bankrupts, and that your orator may have such other further and different relief in the premises, as the nature of the case may require and as to your honors shall seem meet.

May it please your honors to grant unto your orator a writ of subpœna issuing out of and under the seal of this honorable court directed to the said defendants Benjamin F. Murphy and Harriet D. Murphy, his wife, Edward G. Mason, Robert E. Jenkins, as assignee in bankruptcy of the estate of Benjamin F. Murphy, bankrupt; First Na-
24 tional Bank of Morrisville, The Troy City National Bank, American Exchange National Bank, The Central National Bank, The Nassau Bank, The National Webster Bank, First National Bank of Easton, William F. Weld, The First National Bank of Rockville, The First National Bank of Wilkesbarre, Benjamin F. Allen, Hoyt Sherman, as assignee in bankruptcy of the estate of Benjamin F. Allen, bankrupt, thereby commanding them and each of them at a certain day and under a certain penalty therein to be specified, personally to be and appear before your honors in this honorable court, and then and there to answer all and singular the premises, and to stand to, perform, and abide by such order and decree therein as to your honors shall seem meet; and your orator will ever pray, etc.

NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY,
By HOYNE, HORTON & HOYNE, *Its Solicitors.*

HOYNE, HORTON & HOYNE,
Solicitors & of Counsel of Complainant.

(Endorsed:) Filed Dec. 10, 1875. Wm. H. Bradley, *Clk.*

25 And on the same day, to wit, the 10th day of December, A. D. 1875, a writ of subpœna issued out of said clerk's office to said defendants in said entitled cause, which said writ, with the return of the marshal endorsed thereon, is in the words and figures following, to wit:

Writ of subpœna.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

The United States of America to Benjamin F. Murphy and Harriet D. Murphy, his wife, Edward G. Mason, Robert E. Jenkins, as assignee, &c., First National Bank of Morrisville, The Troy City National Bank, American Exchange National Bank, The Central National Bank, The Nassau Bank, The National Webster Bank, First National Bank of Easton, William F. Weld, The First National Bank of Rockville, The First National Bank of Wilkesbarre, Benjamin F. Allen, and Hoyt Sherman, assignee in bankruptcy, &c., greeting:

We command you and every of you that you appear before our judges of our circuit court of the United States of America for the northern district of Illinois, at Chicago, in said district, on the first Monday in the month of January next, to answer the bill of complaint of The Northwestern Mutual Life Insurance Company this day filed in the clerk's office of said court, in said city of Chicago, then and there to re-
26 ceive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default. To the marshal of the northern district of Illinois to execute.

Witness, the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Chicago, aforesaid, this tenth day of December, in the year of our Lord one thousand eight hundred and seventy-five, and of our Independence the 100th.

WM. H. BRADLEY, *Clerk.*

MEMORANDUM.—The above-named defendants are notified that unless they, and each of them, shall enter their appearance in the clerk's office of said court, at Chicago aforesaid, on or before the day to which the above writ is returnable, the complainant's bill will be taken against them as confessed, and a decree entered accordingly.

WM. H. BRADLEY, *Clerk.*

I have served the within writ within my district in the following manner, to wit: Upon Edward G. Mason, therein named, on the 29th day of December, A. D. 1875, by personally delivering a true copy of the same on the aforesaid day. I did not serve the other defendants, having been unable to find either them, or that they had any residence within my district.

B. H. CAMPBELL,
27 *U. S. Marshal.*
By J. N. BUCK, *Deputy.*

(Endorsed:) Filed Jan'y 7th, A. D. 1876. Wm. H. Bradley, clerk.

Afterwards, to wit, on the 4th day of February, A. D. 1876, in the record of the proceedings of said court in said entitled cause before the Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

THE NORTHWESTERN MUTUAL LIFE Insurance Company, *v.* BENJAMIN F. MURPHY ET AL. } In chancery.

Now comes the complainant, by Messrs. Hoyne, Horton and Hoyne, its solicitors, and it appearing to the court from affidavit filed herein

that The Troy City National Bank, The American Exchange National Bank, The Central National Bank, and William F. Weld, four of the defendants herein, are not inhabitants of and cannot be found within the northern district of Illinois, and it appearing that they have not voluntarily entered their appearance in this cause, on motion of said complainant's solicitors. It is ordered by the court that said absent defendants, The Troy City National Bank, The American Exchange National Bank, The Central National Bank, and William F.
28 Weld, appear, plead, answer, or demur to the complainant's bill of complaint herein by the first Monday of March next, and that personal service of a copy of this order be had upon each of said absent defendants ten days before the said first Monday of March, A. D. 1876.

Afterwards, to wit, on the 4th day of March, A. D. 1876, said defendant Edward G. Mason by his solicitors, filed in said clerk's office his answer in said entitled cause, which said answer is in the words and figures following, to wit :

Answer of Edward G. Mason.

Circuit court of the United States, northern district of Illinois.

THE NORTHWESTERN MUTUAL LIFE Insurance Company *vs.* BENJAMIN F. MURPHY ET AL. } In chancery.

The separate answer of Edward G. Mason, one of the defendants in said bill, to said bill of complaint.

This defendant, reserving unto himself all right of exception unto said bill for answer thereunto, says that he does not know, and is not informed save by said bill, whether said defendants Murphy and Allen ever applied to said complainant for a loan, as stated in said bill, or whether said complainant consented to make such loan upon the
29 conditions named in said bill, or whether the defendants consented to such conditions as in said bill set forth, and leaves said complainant to make full proof thereof.

And this defendant denies that said complainant ever did advance, loan, and pay over to said Benjamin F. Murphy and Benjamin F. Allen the said sum of twenty thousand dollars, lawful money of the United States, as in said bill alleged.

And this defendant does not know, and is not informed save by said bill, whether said defendants Murphy and Allen made, executed, and delivered to said complainant a certain bond in writing, as in said bill alleged, and leaves said complainant to make full proof thereof.

And this defendant denies that such bond was executed by said Murphy and Allen and delivered as security for the payment of said sum of twenty thousand dollars loaned by said complainant, as in said bill alleged.

And this defendant denies that said defendants Benjamin F. Murphy and Harriet D. Murphy, his wife, made, executed, acknowledged, and delivered to said complainant a mortgage deed to secure the payment of said sum loaned, as in said bill alleged, and whether said
30 Murphy and his wife ever executed and delivered to complainant the mortgage deed in said bill set forth this defendant does not

know, and is not informed save by said bill, and leaves complainant to make full proof thereof.

And this defendant does not know, and is not informed save by said bill, whether said mortgage, if any there was, was signed, sealed, delivered, filed for record, and recorded, as in said bill alleged, or whether the property in said bill mentioned has been sold to the city of Chicago, and denies that interest became due and payable as in said bill alleged, or that default occurred, or that the principal sum of the bond and mortgage in said bill mentioned became due and payable, or is now due and owing to said complainant, or that said Murphy and his wife and said Allen were notified, or that demand was made as in said bill alleged.

And this defendant, further answering, admits that said Benjamin F. Murphy made an assignment to this defendant, dated and recorded as in said bill alleged, and that said Murphy and his wife made a conveyance to this defendant; that his title to said premises is by virtue of said assignment and conveyance, but this defendant denies that said title is subject and subsequent to the lien of said mortgage.

31 And this defendant does not know, and is not informed save by said bill, whether said Murphy and said complainant and said Allen filed their respective petitions in the United States district court, as in said bill alleged, but leaves said complainant to make full proof thereof.

And this defendant admits that said Murphy and said Allen are insolvent, and denies that said mortgaged premises are not of sufficient value to pay the full amount pretended to be due to said complainant under said alleged bond and mortgage.

And this defendant admits that he has been notified of said complainant's pretended election in said bill set forth, but denies the right of said complainant to make such election.

And this defendant, further answering, saith that said pretended loan in said bill alleged to be made, and the contract for and concerning the same, was usurious.

And this defendant, further answering, says that said sum of money in said bill mentioned was not loaned or in any manner due and owing from any person or corporation to any other person or corporation in the State of Illinois; and that said complainant did directly ac-

32 cept in money a greater sum for the loan of said sum of money than the rate of six per centum per annum.

And this defendant, further answering, says that the premises described in said alleged mortgage deed set forth are situated in the State of Illinois, and that the complainant ought not to have the relief prayed for in said bill, for the reason that the statutes of said State provide that when any real estate is sold by virtue of any decree of foreclosure of mortgage that redemption of such real estate may be made within fifteen months of such sale, in the manner provided in such statutes; and this defendant prays the same advantage of this answer as if he had pleaded or demurred to said bill of complaint.

And this defendant, further answering, denies that the complainant is entitled to the relief, or any part thereof, in said bill demanded, and prays to be dismissed with his costs in this behalf sustained.

EDWARD G. MASON.

MATTOCKS AND MASON,
Solicitors for Def't Mason.

(Endorsed:) Filed March 4, 1876. Wm. H. Bradley, cl'k.

Afterwards, to wit, on the 28th day of June, A. D. 1876, in
33 the record of the proceedings of said court in said entitled cause, before the Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

THE NORTHWESTERN MUTUAL LIFE INSURance Company *vs.* BENJAMIN F. MURPHY ET AL.	In chancery.

On motion of complainant's solicitor it is ordered by the court that this cause be referred to Henry W. Bishop, esq., master in chancery of this court, to take proof herein and report the same to the court, together with the amount due complainant herein.

Afterwards, to wit, on the 2d day of January, A. D. 1877, in the record of the proceedings of said court in said entitled cause, before the Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

THE NORTHWESTERN MUTUAL LIFE INSURance Company *vs.* BENJAMIN F. MURPHY, HARRIET D. MURPHY, Edward G. Mason, Robert E. Jenkins, as assignee, etc., First National Bank of Morrisville, The Troy City National Bank, American Exchange National Bank, The Central National Bank, The Nassau Bank, The National Webster Bank, First National Bank of Easton, William F. Weld, The First
34 National Bank of Rockville, The First National Bank of Wilkesbarre, Benjamin F. Allen, and Hoyt Sherman, as assignee, &c.	In chancery.

This cause having this day been brought on to be heard upon the bill of complaint filed herein, taken as confessed by the defendants Benjamin F. Murphy, Harriet D. Murphy, First National Bank of Morrisville, The Troy City National Bank, American Exchange National Bank, The Central National Bank, The Nassau Bank, The National Webster Bank, First National Bank of Easton, William F. Weld, The First National Bank of Rockville, The First National Bank of Wilkesbarre, Benjamin F. Allen, and Hoyt Sherman, as assignee in bankruptcy of the estate of Benjamin F. Allen, bankrupt, also upon the amended answer of the defendant Edward G. Mason, and the replication of the complainant thereto, the notice of special matter of the defendant Edward G. Mason, the answer of said defendant Robert E. Jenkins, as assignee in bankruptcy of the estate of Benjamin F. Murphy, bankrupt, and the replication of the complainant thereto, and upon the report of Henry W. Bishop, master in chancery of this court, which report bears date the sixth day of December, A. D. 1876, and was made in pursuance of an order of this court, heretofore made in this
35 cause, referring it to the said master to take the proofs in said cause and to compute the amount due to the complainant upon the bond and the mortgage and the covenants therein contained, mentioned, and set forth in said bill of complaint, and which report was filed

herein on the 13th day of December, A. D. 1876, on reading said report on motion of counsel for the complainant, no cause to the contrary having been shown, it is ordered, adjudged, & decreed, and this court, by virtue of the authority in it vested, doth order, adjudge, and decree, that the said report, and all things therein contained, do stand ratified and confirmed.

And this court, being fully advised in the premises, doth find and adjudge that all the material allegations in the said bill of complaint contained have been fully proved, and that there is due to the complainant in this cause from the said defendants Benjamin F. Allen and Benjamin F. Murphy the sum of twenty-three thousand four hundred and seventy-five dollars, with interest thereon from the sixth day of December, A. D. 1876, the date of said master's report, and the further sum of eleven hundred and seventy-three dollars and seventy-five cents ($1,173.75) for its solicitor's fees, which the court doth now find and adjudge to be reasonable and customary solicitor's fees and due to said complainant.

It is therefore, upon motion of counsel for the complainant, ordered, adjudged, and decreed, and this court, by virtue of the power and authority in it vested, doth order, adjudge, and decree, that the said defendants, or some of them, pay or cause to be paid the complainant within one hundred days from the date of the entry of this decree
36 the said sum of twenty-three thousand four hundred and seventy-five dollars, with interest thereon at the rate of six per centum per annum from the said sixth day of December, A. D. 1876 (being the date of said master's report), to the day of such payment, and the said sum of eleven hundred and seventy-three dollars and seventy-five cents; and in default of so doing that all and singular the said premises mentioned and described in the said bill of complaint and hereinafter described, or so much thereof as may be sufficient to satisfy the amount due to the complainant, as hereinbefore adjudged, together with interest and the costs in this case, which may be sold separately without material injury to the parties interested, be sold at public auction by or under the direction of Henry W. Bishop, the master in chancery of this court, and that said master make such sale in accordance with the course and practice of this court, and that at such sale the complainant or any of the parties to this cause may become the purchaser.

The premises authorized to be sold under and by virtue of this decree are the following, to wit, all the certain lot, piece, or parcel of land situate, lying, and being in the county of Cook, and State of Illinois, known and described as follows, viz:

37 The south half (S. ½) of lot number seventeen (17), in block number twenty-six (26), in Gurley's subdivision of blocks twenty-four (24), twenty-five (25), twenty-six (26), twenty-seven (27), and twenty-eight (28), in the assessor's division of the southwest fractional quarter of section twenty-two (22), township thirty-nine (39), range fourteen east of the third principal meridian.

Also, the east one hundred and fifty (150) feet of lot number twenty-three (23), in Gurley's subdivision of blocks numbered twenty-five (25), twenty-eight (28), and thirty-eight (38), in the canal trustees' subdivision of the west half of section twenty-seven (27), township thirty-nine (39), range fourteen (14), east of the third principal meridian; together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging.

It is further ordered that said master make report to this court of such sale and of his acts and doings hereunder for approval and con-

firmation and for further direction herein, and that he retain from the proceeds of said sale the amount of his fees, disbursements, and commissions thereon, and bring the residue of such proceeds, if any, into court, to abide the further order of the court, and that he take the receipt of the clerk of this court therefor and file the same with said
38 report; and if the moneys arising from such sale shall be insufficient to pay the amount so found and adjudged to be due to the complainant, with the interest thereon, and the costs of suit and expenses of sale, as aforesaid, that the said master specify the amount of such deficiency in his said report of sale.

And it is further ordered that the clerk of this court hold such moneys so to be paid him by said master subject to the further order and direction of this court in this cause.

And it is further ordered that if the said premises, or any parcel thereof, shall, at such sale, be struck off and sold by the said master to the complainant in this cause, the complainant shall be required to pay to the master only so much of the complainant's bid as shall, taken together with other moneys paid to the master at such sale, on bids for parcels by other persons, if any there be, be sufficient to satisfy the expenses of the sale and the master's fees, disbursements, and expenses and the costs of this suit, and also any excess of the remainder of the amount of said bid after such payment over the amount due the complainant under this decree for indebtedness secured by said bond and mortgage.

39 Afterwards, to wit, on the 24th day of July, A. D. 1877, said master in chancery filed in said clerk's office his report of sale under the decree in said entitled cause, which said report is in the words and figures following, to wit:

Master's report of sale.

40 In the circuit court of the United States for the northern district of Illinois.

THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY, complainant, *vs.* BENJAMIN F. MURPHY, HARRIET D. MURPHY, Edward G. Mason, Robert E. Jenkins, as assignee, etc., First National Bank of Morrisville, The Troy City National Bank, American Exchange National Bank, The Central National Bank, The Nassau Bank, The National Webster Bank, First National Bank of Easton, William F. Weld, The First National Bank of Rockville, The First National Bank of Wilkesbarre, Benjamin F. Allen, and Hoyt Sherman, as assignee, etc., defendants.	In chancery. Master's report of sale.

To the honorable the judges of said court:

The undersigned, Henry W. Bishop, as master in chancery of said court, respectfully reports:

41 That it was in a decree of the said court, entered in the above-entitled cause on the second (2nd) day of January, A. D. 1877 (one thousand eight hundred and seventy-seven), among other things

ordered, adjudged, and decreed that the said defendants, or some of them, pay or cause to be paid to the complainant within one hundred days from the date of the entry of said decree, the sum of twenty-three thousand four hundred and seventy-five dollars, with interest thereon at the rate of six per centum per annum from the sixth day of December, A. D. 1876 (being the date of the said master's report), to the day of such payment, and the sum of eleven hundred and seventy-three dollars and seventy-five cents, and in default of so doing, that all and singular the premises mentioned and described in the bill of complaint in this cause, and thereinafter and hereinafter described, or so much thereof as might be sufficient to satisfy the amount due to the complainant as thereinbefore adjudged, together with the interest and the costs in this case, and which might be sold separately without material injury to the parties interested, be
42 sold at public auction, by or under the direction of the said Henry W. Bishop, master in chancery of this court, and that said master make such sale in accordance with the course and practice of this court, and that at such sale the complainant or any of the parties to this cause might become the purchaser. It is further ordered that if the said premises or any parcel thereof should, at such sale, be struck off and sold by the master to the complainant in this cause, the complainant should be required to pay to the master only so much of the complainant's bid, as should taken together with other moneys paid to the master at such sale on bids for parcels by other persons, if any there were, be sufficient to satisfy the expenses of the sale, and the master's fees, disbursements, and expenses and the costs of this suit, and also any excess of the remainder of the amount of said bid, after such payment, over the amount due the complainant under the said decree for indebtedness secured by said mortgage. It was further ordered that said master make report to this court of such sale and of his acts and doings thereunder for approval and confirmation and for further direction herein, and that he retain from the proceeds
43 of said sale the amount of his fees, disbursements, and commissions thereon, and bring the residue of such proceeds, if any, into court to abide the further order of the court, and that he take the receipt of the clerk of this court therefor and file the same with said report; and if the moneys arising from such sale should be insufficient to pay the amount so found and adjudged to be due to the complainant, with the interest thereon and the costs of suit and expenses of sale as aforesaid, that the said master specify the amount of such deficiency in his said report of sale. That in accordance with the said decree of the said court the undersigned, as such master in chancery, advertised the said premises and property for sale at public auction to the highest bidder for cash in hand in the Chicago Daily Evening Journal, a daily newspaper of general circulation, printed and published in the city of Chicago, County of Cook, and State of Illinois, the date of the first paper containing the said advertisement being the thirteenth (13th) day of April, A. D. 1877, and the date of the last paper containing the same being the seventh (7th) day of May, A. D. 1877, the said advertisement having been inserted for more than twenty (20) days, to wit, twenty-one days, exclusive of Sundays, previous to
44 the said day of sale, as appears by a certified copy of the said advertisement and certificate of publication, hereto attached and made a part hereof; that at the hour, day, and place fixed and mentioned in the said advertisement, to wit, at the hour of eleven (11) in the forenoon of the eighth (8th) day of May, A. D. 1877 (one thousand

eight hundred and seventy-seven), at the front door, on La Salle street of the Republic Life Building, Nos. 157 to 163, La Salle street, Chicago, Cook County, Illinois, the undersigned, as such master in chancery, did offer the premises and property in the said advertisement and decree mentioned and described as all the certain lot, piece, or parcel of land situate, lying, and being in the county of Cook and State of Illinois known and described as follows, viz: The south half (S ½) of lot number seventeen (17) in block number twenty-six (26), in Gurley's subdivision of blocks twenty-four (24), twenty-five (25), twenty-six (26), twenty-seven (27), and twenty-eight (28), in the assessor's division of the southwest fractional quarter of section twenty-two (22), township thirty-nine (39), range fourteen east of the third principal meridian; also, the east one hundred and fifty (150) feet of lot number twenty-three (23), of Gurley's subdivision
45 of blocks numbered twenty-five (25), twenty-eight (28), and thirty-eight (38) in the canal trustees' subdivision of the west half of section twenty-seven (27), township thirty-nine (39), range fourteen (14) east of the third principal meridian, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, for sale, at public auction, to the highest and best bidder for cash in hand and as follows, to wit: The undersigned first offered for sale the said south half (S. ½) of said lot number seventeen (17), and then and there struck off and sold the same for the sum of thirteen thousand eight hundred dollars to said complainant, that being the highest and best sum bid for the same, and it being the highest and best bidder therefor. The undersigned then offered for sale the said east one hundred and fifty (150) feet of said lot number twenty-three (23), being the remainder of the said premises and property, and then and there struck off and sold the same for the sum of twelve thousand dollars to said complainant, that being the highest and best bidder therefor, the total amount bid on said sales being twenty-five thousand and eight
46 hundred dollars ($25,800), and each of said bids for said complainant having been made by H. L. Palmer, the president of said complainan tcompany, and, as provided for in said decree, the said complainant (purchaser as aforesaid), by his solicitor, has paid over to the undersigned as such master in chancery, the sum of one hundred & twenty-two dollars and fifty-six cents, being the amount of the taxed costs herein, and also the master's fees, commission, and disbursements on said sale. A particular statement of the said sale is hereto annexed, made a part hereof, and marked Exhibit A. All of which is respectfully submitted.

HENRY W. BISHOP,
Master in Chancery of the Circuit Court of the United States for the Northern District of Illinois.

Dated Chicago, 8th May, A. D. 1877.

EXHIBIT A.

2nd January, 1877.	Decree for sum of.....	$23,475
8th May, 1877.	Interest thereon at 6 per cent. per annum from the sixth (6th) day of December, A. D. 1877 (being the date of the said master's report).....	$589 19
	Solicitors' fees.....	$1,173 75
	Taxed costs.....	$122 56

	Master's commissions on said sale...	$387
	Master's report of sale.....	$10
	Paid for advertising said sale.....	$50 08
	Total.....	$25, 807 58
47	Amount bid on said sales	$25, 800
	Amount unsatisfied under said decree	$7 58

Received of the said Henry W. Bishop, master in chancery of the circuit court of the United States for the northern district of Illinois, the sum of one hundred and twenty-two dollars and fifty-six cents, being the amount of the taxed costs herein.

WM. H. BRADLEY,
Clerk of the Circuit Court of the United States for the Northern District of Illinois.

Settled with Henry W. Bishop, master in chancery aforesaid, in accordance with the above statement.

HOYNE, HORTON & HOYNE,
Solicitors for the said Complainant.

Master's sale.

UNITED STATES OF AMERICA:

In the circuit court of the United States for the northern district of Illinois. In chancery.

THE NORTHWESTERN MUTUAL LIFE INSURance Company, complainant,
vs.
BENJAMIN F. MURPHY, HARRIET D. MURPHY, Edward G. Mason, Robert E. Jenkins, as assignee, etc., First National Bank of Morrisville, The Troy City National Bank, American Exchange National Bank, The Central National Bank, The Nassau Bank, The National Webster Bank, First National Bank of Easton, William F. Weld, The First National
48 Bank of Rockville, The First National Bank of Wilkesbarre, Benjamin F. Allen, and Hoyt Sherman, as assignee, etc., defendants.

In pursuance of a decree of the said court, entered in the above-entitled cause on the 2nd day of January, A. D. 1877, I, Henry W. Bishop, master in chancery of said court, will sell at public auction to the highest and best bidder, for cash in hand, at the front door, on La Salle street, of the Republic Life Building, numbers 157 to 163 La Salle street, Chicago, on Tuesday, the 8th day of May, A. D. 1877, at eleven (11) o'clock in the forenoon of the said last-mentioned day, the premises and property in the said decree mentioned and described as all the certain lot, piece, or parcel of land situate, lying, and being in the county of Cook, and State of Illinois, known and described as follows, viz:

The south half (S. ½) of lot number seventeen (17), in block number twenty-six (26), in Gurley's subdivision of blocks twenty-four (24), twenty-five (25), twenty-six (26), twenty-seven (27), and twenty-eight (28), in the assessor's division of the southwest fractional quarter of section twenty-two (22), township thirty-nine (39), range fourteen east of the third principal meridian; also, the east one hundred and
49 fifty (150) feet of lot number twenty-three (23), in Gurley's subdivision of blocks number twenty-five (25), twenty-eight (28), and thirty-eight (38), in the canal trustees' subdivision of the west half of section twenty-seven (27), township thirty-nine (39), range fourteen (14) east of the third principal meridian, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging.

HENRY W. BISHOP,
Master in Chancery of the Circuit Court of the United States for the Northern District of Illinois.

Dated Chicago, April 13th, A. D. 1877.
Hoyne, Horton & Hoyne, complainant's solicitors.

This is to certify that the annexed notice of master's sale was published in the Chicago Daily Evening Journal, a newspaper of general circulation, printed and published in the city of Chicago, county of Cook, and State of Illinois, twenty-one (21) times, exclusive of Sundays, being one time a day for twenty-one (21) successive days, the date of the first paper containing the same being the 13th day of April, 1877, having been published and issued on that day, and the date of the last paper containing the same being the 7th day of May,
50 1877, being published and issued on that day, and that I have received $50.08 *dollars* for publishing the same.

Dated at Chicago, May 7th, 1877.

CHARLES L. WILSON,
Publisher.

(Endorsed:) Filed this 24th day of July, A. D. 1877. Wm. H Bradley, clerk.

51 Afterwards, to wit, on the 25th day of July, A. D. 1877, in the record of the proceedings of said court in said entitled cause, before the Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY *vs.* BENJAMIN F. MURPHY ET AL. } In chancery.

On motion of complainant's solicitor it is ordered that the report of sale herein by Henry W. Bishop, esq., the master in chancery of this court, be confirmed, unless cause be shown to the contrary within five days.

And afterwards, to wit, on the 31st day of July, A. D. 1877, in the record of the proceedings of said court in said entitled cause, before

the Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

52 NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY
vs.
BENJAMIN F. MURPHY, HARRIET D. MURPHY, Edward G. Mason, Robert E. Jenkins, as assignee, etc., First National Bank of Morrisville, The Troy City National Bank, American Exchange National Bank, The Nassau Bank, The National Webster Bank, First National Bank of Easton, William F. Weld, The First National Bank of Rockville, The First National Bank of Wilkesbarre, Benja. F. Allen, and Hoyt Sherman, as assignee, etc. } In chancery.

And now again comes the complainant by its solicitors, Hoyne, Horton & Hoyne, and upon their motion, no cause to the contrary having be' shown, it is ordered that the report of Henry W. Bishop, master in chancery of this court, of the sale, and the sale of the premises described in the decree entered in this cause on the second day of January, A. D. 1877, and which said report was filed here-
53 in on the twenty-fourth day of July, A. D. 1877, be, and the same are hereby, approved, ratified, and absolutely confirmed. And it is further ordered, adjudged, and decreed by the court that the said master execute and deliver to the Northwestern Mutual Life Insurance Company, the purchaser named in said report of sale, a deed conveying the said premises, and all right and title, legal or equitable, of said defendants therein so by said master sold to him, as in said report mentioned. And it is further ordered, adjudged, and decreed that the said defendants, and all persons claiming or to claim from, through, or under them from and after the commencement of this suit, and all persons having a lien subsequent to the mortgage mentioned in the bill of complaint in this cause, either by judgment or decree or otherwise, upon the premises described in said mortgage, and his and their heirs and personal representatives, and all persons having any lien or claim by, from, through, or under such subsequent judgment or decree, and their heirs and personal representatives, and all persons claiming under them, be forever barred and foreclosed of and from all equity of redemption and other claim, legal or equitable, of, in, and to the said premises and every part and parcel thereof.

54 And it is further ordered that the said purchaser of said premises be let into possession thereof, and that any of the parties to this suit who may be in possession of said premises, or any part thereof, and any person or persons who, since the commencement of this suit, have come into possession under them, or either of them, deliver possession thereof to said purchaser on production of the master's deed for said premises, and a copy of this order confirming said sale. And it appearing to the court from said report that the said master has, as required by said decree, paid into the court and tak*ing* the receipt of W. H. Bradley, esq., clerk therefor, and file' the same with his report, the sum of one hundred twenty-two dollars and fifty-six cents, being the amount of the taxed costs in said cause, and that, after deducting the

same, together with the master's fees, commissions, and disbursements, there remains to be applied upon the amount due to said complainant under said decree the sum of twenty-four thousand six hundred and forty-one dollars and seventeen cents: It is ordered that said clerk credit said last-mentioned sum on said decree as paid to said complainant on said twenty-fourth day of July, A. D. 1877. And it
55 further appearing to the court from said report that the proceeds of said sale were insufficient to pay the amount found and adjudged to be due to the complainant herein, and that the deficiency thereof amounts to the sum of seven dollars and fifty-eight cents.

56 Afterwards, to wit, on the 31st day of December, A. D. 1878, said defendant Edward G. Mason, by his solicitors, filed in said clerk's office his appeal bond in said entitled cause, which said bond is in the words and figures following, to wit:

Appeal bond.

In the Supreme Court of the United States.

THE NORTHWESTERN MUTUAL LIFE INSURance Company
vs.
BENJAMIN F. MURPHY ET AL. } In chancery.

Know all men by these presents that we, Edward G. Mason and John Mattocks, of the city of Chicago, Illinois, are held and firmly bound unto The Northwestern Mutual Life Insurance Company in the sum of one thousand ($1,000) dollars, to be paid to the said The Northwestern Mutual Life Insurance Company, its successors or assigns; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals; dated this thirty-first day of December, A. D. 1878.

Whereas the above-named Edward G. Mason hath taken an appeal to the Supreme Court of the United States to reverse the decree
57 entered January 2d, A. D. 1877, and also the decree rendered July 31st, A. D. 1877, in the above-entitled cause by the circuit court of the United States for the northern district of Illinois:

Now, therefore, the condition of this obligation is such that if the above-named Edward G. Mason shall prosecute his said appeal to effect, and answer all costs if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and virtue.

EDWARD G. MASON. [SEAL.]
JOHN MATTOCKS. [SEAL.]

Sealed and delivered in the presence of—
ALFRED B. MASON.

Approved.

H. W. BLODGETT, *Judge.*

(Endorsed:) Filed Dec. 31, 1878. Wm. H. Bradley, cl'k.

58 And afterwards, to wit, on the 15th day of September, A. D. 1879, a certain stipulation was filed in said clerk's office, in said entitled cause, in the words and figures following, to wit:

Stipulation.

THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY
v.
BENJAMIN F. MURPHY ET AL.

It is hereby stipulated that the above-entitled cause, being then fully at issue, and the bill having been taken pro confesso against all defendants except Edward G. Mason and Robert E. Jenkins, said cause was duly referred to Henry W. Bishop, master in chancery of said court, to take proofs herein and report to the court, and that evidence in support of all the allegations in the bill of complaint filed in said cause was produced before said master, who duly filed his report and the evidence taken by him under said reference December 13th, 1876, finding the material allegations in said bill of complaint fully proven, and that the total amount due and owing to said complainants upon the bond secured by the mortgage in said bill mentioned to date of said report, December 6th, 1876, together with a reasonable compensation to complainants, as fees for their solicitors' services in said cause, under the covenant contained in said mortgage, was the sum of twenty-
59 four thousand six hundred and forty-eight dollars and seventy-five cents ($24,648.75), which report was in all things duly confirmed by the order and decree of the court.

And it is further stipulated that the testimony taken by said master and his said report thereon, and the appearances entered in said cause February 4th, 1876, being of unimportant parties, who do not join in the appeal therein, and also the answer of Robert E. Jenkins, as assignee, one of said parties, and the replication thereto, may be omitted in making up the record on appeal in said cause; and also exceptions to answer of E. G. Mason, order thereon, amendment to answer of E. G. Mason, and replication thereto.

MATTOCKS AND MASON,
Solicitors for Appellant.
HOYNE, HORTON AND HOYNE,
Solicitors for Appellees.

(Endorsed:) Filed September 15, 1879. Wm. H. Bradley, cl'k.

60 NORTHERN DISTRICT OF ILLINOIS, *set:*

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a correct and complete transcript of the record of the proceedings made up under and in conformity with the stipulation filed September 15, A. D. 1879, in the cause wherein the Northwestern Mutual Life Insurance Company was the complainant and Benjamin F. Murphy et al. were the defendants, as appears from the files and records of said court now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at my office in Chicago, in said district, this 3rd day of October, A. D. 1879, and of our Independence the one hundred and fourth year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

61 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

To The Northwestern Mutual Life Insurance Company, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October, A. D. 1879, pursuant to an appeal prayed in and allowed by the circuit court of the United States for the northern district of Illinois, wherein Edward G. Mason is appellant and you are appellee, to show cause, if any there be, why the decree mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Henry W. Blo .gett, judge, this eleventh day of September, in the year of our Lord one thousand eight hundred and seventy-nine.

H. W. BLODGETT, *Judge.*

We hereby accept service of the above citation this 12th day of Sept., 1879.

HOYNE, HORTON & HOYNE,
Att'ys for Northwestern Mut. Life Ins. Co.

62 On this twelfth day of September, in the year of our Lord one thousand eight hundred and seventy-nine, personally appeared Alured G. Gibson before me, the subscriber, and makes oath that he delivered a true copy of the within citation to Hoyne, Horton & Hoyne, the solicitors of record for The Northwestern Mutual Life Insurance Company in the cause within referred to.

ALURED G. GIBSON.

Subscribed and sworn to before me Sept. 12, 1879.

E. A. DRUMMOND,
U. S. Com., Nor. Dist. Ill.

(Indorsed:) Supreme Court of the United States. Edward G. Mason, appellant, vs. The Northwestern Mutual Life Insurance Company, appellee. Citation. To October term, A. D. 1879.

(Indorsement on cover:) No. 79. Edward G. Mason, appellant, vs. The Northwestern Mutual Life Insurance Company. N. Illinois C. C. U. S. Filed 16th October, 1879.

OCT 26 1882

SUPREME COURT of the UNITED STATES.

OCTOBER TERM, A. D. 1882.

EDWARD G. MASON,
Appellant,
v.
THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY,
Appellee.

Appeal from the United States Circuit Court for the Northern District of Illinois.

BRIEF FOR APPELLANT.

EDWARD G. MASON,
COUNSEL FOR APPELLANT.

PRESS OF BEACH, BARNARD & CO., 104 RANDOLPH STREET, CHICAGO.

SUPREME COURT of the UNITED STATES,

OCTOBER TERM, A. D. 1882.

EDWARD G. MASON,
Appellant,
v.
THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY,
Appellee.

Appeal from the United States Circuit Court for the Northern District of Illinois.

STATEMENT OF THE CASE.

December 10, 1875, The Northwestern Mutual Life Insurance Company filed a bill in the United States Circuit court for the northern district of Illinois to foreclose a mortgage given May 7, 1874, by Benjamin F. Murphy and wife to secure the bond of said Murphy and one Allen to said company for $40,000. The mortgage conveyed certain premises situated in the city of Chicago, in said district, which had been conveyed by Murphy and wife on April 1, 1875, to Edward G. Mason, to whom said Murphy, on same day, made an assignment of all of his property in trust for the benefit of his creditors. The

bill prayed for an accounting and payment of amount due, and in default thereof that said premises should be decreed to be sold by and under the direction of the court, and the proceeds applied in satisfaction of costs and amount found due, and that all persons claiming by, through or under the defendants, or any or either of them, either as purchasers or otherwise, be forever barred and foreclosed of and from all right, title, interest, claim and demand whatsoever in or upon or against said premises or any part thereof, and of all right and equity of redemption of said premises. (Transcript of Record, page 9.) Said Edward G. Mason was made a party defendant, and filed his answer setting up, among other things, that the premises described in said alleged mortgage deed are situated in the State of Illinois, and that the complainant ought not to have the relief prayed for in said bill, for the reason that the statutes of said state provide that when any real estate is sold by virtue of any decree of foreclosure of mortgage, that redemption of such real estate may be made within fifteen months of such sale, in the manner provided in such statutes, and prayed the same advantage of said answer as if he had pleaded or demurred to said bill of complaint. (Transcript of Record, page 12.) January 2, 1877, a decree was entered directing the master to make a sale of the premises in question according to the course and practice of the court. (Transcript of Record, page 14.) July 24, 1877, the master's report was filed reporting a sale of the premises to the complainant May 8, 1877, and July 31, 1877, a decree was entered confirming the sale, directing the master to execute to complainant a deed of the premises, adjudging the defendants to be forever barred and foreclosed from all

equity of redemption and other claim, legal or equitable, of, in and to said premises and every part thereof, and ordering that the purchaser be let into possession of the premises. (Transcript of Record, page 20.) From each of the decrees in question, that entered January 2, A. D. 1877, and that entered July 31, A. D. 1877, the defendant took an appeal to this court to reverse the same, and duly filed his appeal bond. (Transcript of Record, page 21.)

Assignment of Errors.

1. The court erred in the decree entered January 2, A. D. 1877, in denying to the defendant, Mason, the right to redeem from the sale thereby ordered, as prayed for by his answer, and in ordering sale to be made in accordance with the course and practice of the court, without making provision for redemption after sale.

2. The court erred in the decree entered July 31, 1877, in confirming the master's sale of the premises made without redemption; in directing the master to execute a deed of the premises before the time of redemption had expired; in adjudging that the defendant should be forever barred and foreclosed from all equity of redemption and other claim in the premises, and in ordering that the purchaser should be let into possession of the premises.

SUPREME COURT of the UNITED STATES,

OCTOBER TERM, A. D. 1882.

NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY, *Appellee,*

ads.

EDWARD G. MASON, *Appellant.*

Supplemental Brief of Appellee in Reply to Appellant.

Since the brief of appellant was printed in this case, and a copy furnished by counsel of appellant, we wish to note what we conceive to be some gross misapprehensions as to the specific nature of the questions raised and settled in other cases by this court.

We had believed that nothing was more clear, definite or precise than the language of this court in the two cases of *Brine* v. *Insurance Co.*, 96 U. S. Reports, 627, and that of the recent case decided at the last October term, 1881, *Burley, assignee,* v. *Flint*, a copy of which we annexed to our former brief.

The appellant in his brief, page 5, makes the point "that because the decree of foreclosure *made no provision* "*for redemption after sale, that therefore it is erroneous and* "*should be reversed.*"

And again, the counsel says in a *second* point, that this court has held, that a precisely similar decree entered October 19, 1877, by the United States court for the Northern district of Illinois, according to the usual course and practice of that court, *meant* a sale without any right of redemption, and cites *Burley* v. *Flint*, already referred to.

The counsel in both citations omits any reference whatever to the TIME *given* within which, under the statute of Illinois, the right of redemption to be *available* must HAVE BEEN EXERCISED.

This court in the Brine case was not called upon to pass upon the question whether, after the statutory *time* for making a redemption had elapsed in Illinois, the appellant could, at whatever time afterwards he chose, come here and ask a reversal of the decree because his *time* to *appeal* to this court had *not elapsed*.

Neither did this court in the *Brine* case decide that the decree of foreclosure and sale were *void* because they made no specific provision for the redemption secured by the statutes of Illinois, and only secured to an appellant because of that statute.

The court in that case does say that, "if the point had "been raised or insisted on by the appellee, it would ad- "mit of doubt whether this question is fairly raised by the "decree; for while it orders the sale of the lot, and a re- "port to the court, it says *nothing* about *barring the equity* "*of redemption*, nor of the making of a deed. And, but

"for a single phrase in the decree, it would seem that the "appropriate *time* to *raise this question* would be on the "confirmation of the report of sale, and the order for a "deed to the purchaser, which, in that case, *had not* yet "*been* done." (page 632.)

And the court further say "that it was conceded by "counsel in that case (a circumstance which had not been "made apparent on the record), that it was according to "the practice of the court below, that when the master "makes a deed to the purchaser, that deed by the uniform "practice of the court, gives him the right of possession, "and cuts off all the right of redemption, whether statu-"tory or otherwise."

Now that practice, so conceded to exist in that case, is not only denied in *this case*, but denied by law in every case where the statute of a state in which the court is held, secures a right of redemption after a sale of property under a decree of foreclosure.

And this court then and there decided that: "As it "was important to the holders of the equity of redemp-"tion to know whether it was essential to the exercise of "the right to redeem, that it be exercised *before the sale*, "or could with equal safety be exercised a *year later*, it "is eminently proper, the court said, that it be decided "now."

Thus, I think, it sufficiently appears that in the Brine case this court declared, that if any such practice existed it was utterly illegal and void. And as the practice did not appear of record it did not affect the general opinion of the court in that case.

But the court said, near the close of that opinion:

"It is not necessary, as has been repeatedly said in this

"court, that the form or mode of securing a right like "this should follow precisely that prescribed by the stat- "ute. If the right is *substantially* preserved or secured, "it may be done by such suitable methods as the flexi- "bility of chancery proceedings will enable the court to "adopt, and which are most in conformity with the prac- "tice of the court." Citing *ex parte* McNeil, 13 Wall., 236.

"In the case before us, no better mode occurs to us "than that prescribed by the statute, namely, that the "master making the sale shall give to the purchaser a "certificate of the sale, with the sum at which the land "was sold, and a statement that unless redeemed within "fifteen months, by some one authorized by the law to "make such redemption, he will be entitled to a deed."

Now, it is very clear that if at this sale, under the decree of foreclosure entered the 2d day of January, 1877, the master had made such a *certificate instead of a deed*, there would be nothing erroneous and nothing decreed or done, either as shown by this record or any act of the master, of which the appellant could make complaint to this court—even though he had brought this appeal *within the period*, when, according to the statute of Illinois, he could have made his redemption effective.

How does it even appear that the master in chancery, in 1877—a legal officer of the court and an intelligent lawyer besides—*did not in fact anticipate the question* then pending in this court and decided shortly after by his making such a certificate of sale, in connection with the order of the court, as to expressly save to the appellant this right which existed independently of the decree of the United States courts?

The complaint is not made that the right to redeem

was denied, or that a deed was executed, and appellant refused any recognition of his right to redeem, or that he was deprived of his property before the twelve or fifteen months expired, which, under the statute, was allowed him to redeem; but it is said in the brief of appellant in this case, and it is put forward *as the first point in* the brief, that the *decree of foreclosure* entered January 2, 1877, *made no provision* for "redemption after sale, and "was, therefore, erroneous."

Appellant's only other point is, that this court again in a precisely similar decree entered October 19, 1877, by the court below (that is, the United States Circuit court for the Northern District of Illinois) held "that such a de-"cree meant a sale without any right of redemption." Let us now examine that case.

It is time now to speak of the cases which for all purposes of argument and controversy, must be decisive and conclusive of this question.

THE LATE CASES.

This court bases its decision in the *Burley* v. *Flint* case upon the view taken of the statute of Illinois by the Supreme court of the State, it being a well established rule *of this court* that it will follow the construction of the statutes of states which is placed upon them by the courts of each state.

Next. *The appellant makes the point that* "*He is not* "*affected by the statutory expiration of the time of redemp-*"*tion.*"

He seeks to draw some line of distinction between the case at bar and the *Sutterlin case*, and the case of *Burley* v. *Flint*, because in those cases the appellants proceeded by bills of review and not by appeal!

The answer to that is: that the distinction is one of form merely. Judge BLODGETT, in the case of *Burley* v. *Flint*, when it was before him, said, in reply to some such objection: "The leading principle established by the "Sutterlin case is, that the statutory right of redemption "cannot be denied or taken away by the neglect of the "United States courts to recognize it in the decree, nor "by a denial of such right in express terms. And it "seems to me, if this case has been before the Supreme "court of the United States, when *Brine* v. *Insurance Co.* "and *Orvis* v. *Powell* were under consideration, it is at "least extremely doubtful, if that court would have re-"versed either of those cases for error, it being a well es-"tablished rule of the United States Supreme court to "follow the construction of state statutes, which has been "adopted by the Supreme court of the state enacting the "statute."

Burley v. *Flint*, 9 Bissell, 215.

This court, in the case of *Burley* v. *Flint*, having expressly adopted the decision of the Supreme court of Illinois, we cite here the clear and explicit language used by the Supreme court of Illinois in the case of *Sutterlin* v. *Conn. Mutual Life Ins. Co.*, 90 Ills., 490–91:

"The decree here finding the amount due was good, "and also the order of sale if the amount was not paid "within a hundred days. The defect was, in adding to "the order of sale, that it should be without redemption. "Hold, that additional portion of the order of sale to be "void, then it is null, if as it were not, and the simple "order of sale stands, which has been executed, and a "deed given. The statute gave to the mortgagor the "right of redemption, and he might have exercised it. It "is not the decree that gives the right to redeem.

"The mortgagor does not depend upon that for the "right, but upon the statute. We apprehend that in a "decree of foreclosure, a mere order of sale would be "sufficient, saying nothing about redemption; that the "right of redemption would not be interfered with under "such an order, but would exist in full force, by virtue of "the statute, and that it would be the duty of the officer, "in the execution of the order of sale, to follow the di-"rections of the statute.

"But suppose he should not do so, and upon sale made, "instead of giving a certificate of the sale and that the "purchaser would be entitled to a deed at the end of "fifteen months, if the premises should not be redeemed, "as the statute directs, should do as was done in the pres-"ent case—execute a deed at once? We think that would "not defeat redemption, nor give right of present posses-"sion, at least in equity, but that the statute would con-"trol, and the right of redemption and of present posses-"sion remain by virtue of the statute, and that the deed "would remain inoperative in effect until the expiration "of the period for redemption.

"The decree here made has been executed, the sale "made and deed given. The wrongful circumstance was "the making of the deed at the time of sale, instead of "deferring its execution, until fifteen months afterwards. "The deed was prematurely made, but if it be held as "not affecting any right of the debtor in consequence "thereof, why may it not stand and remain as an oper-"ative deed, after the expiration of the period of redemp-"tion, where no attempt had been made to assert the "right of redemption?"

The case of *Burley* v. *Flint*, expressly adopting the opinion, is clear and luminous. And one would think it

were impossible to find a basis for a doubt as to the meaning of the whole taken together.

But as a singular and ingenious instance of how language may be construed to make the same writing express the most contradictory meanings, I think the ingenuity and work of the appellant may, in this case, stand as a remarkable illustration.

In the opinion of Justice MILLER, clear, vigorous and affluent, he asks in that case, "what an order of reversal "will avail appellant? The decree and sale under it will "still stand good. The time within which defendant can "redeem by the statute of Illinois, is long since passed, "and he has made no offer to redeem. The sale was "made prior to the 23d of February, 1878, the date of "master's report, and the present bill, filed October 17, "1879, twenty months afterwards, and at a time when, "by the statute, both the defendant and his judgment "creditors had ceased to have any right of redemption." (*Vide* opinion annexed to former brief.)

Now the appellant, here, after waiting some nineteen months after confirmation of sale and report takes his appeal, and he now says: He has done exactly what this court advises in the following extract from the court's opinion. The language follows that above quoted, and reads:

"If appellant had appealed from the original decree (in "time) to this court, his remedy was plain—and the deci- "sion would have been reversed. The same result would "probably have followed from the order confirming the "sale and cutting off the right to redeem. He did not "see proper to follow such a course, but seeks by this "bill of review, to let the original decree stand, to *let the "sale stand*," &c.

The omission of the words *in time*, inserted by the writer after the word decree, would have carried on the entire meaning of the whole opinion in harmony to the end, instead of putting the writer in conflict with himself. For the eminent jurist passes right on to the next paragraph, and asks: "How his setting aside the order "of sale will avail him since his *time was passed before* "*he filed his bill?* It would be of no use to him unless "the court go further and make a decree that he now has "the right to redeem in the same manner as if he had "tendered the money within the twelve or fifteen months "which the law allowed for that purpose." (See opinion of court.)

It is perfectly demonstrable that the court was not struggling to do as the Western justice did some years since to know himself, as he thought he did, in a case where he thought the same opinion would answer as a decision for all sides of the case he had decided, and satisfy all parties.

THOS. HOYNE,
Counsel for Appellees.

HOYNE, HORTON & HOYNE.

BRIEF.

I.

The decree of foreclosure entered January 2, A. D. 1877, made no provision for redemption after sale, and was, therefore, erroneous, and should be reversed. The decree ordered the sale to be made in accordance with the course and practice of the court. (Transcript of Record, 14.)

This court has held that a precisely similar decree *was erroneous, and should be reversed.*

Brine v. *Insurance Company*, 96 U. S. Reports, S. C., 627.

And this court has held that a precisely similar decree, entered October 19, 1877, by the United States Circuit court, for the northern district of Illinois, according to the usual course and practice of that court, meant a sale without any right of redemption.

Burley v. *Flint*, No. 544, October Term, 1881, Chicago Legal News, Vol. XIV, p. 237.

The decree in question was entered prior to the decree in *Burley* v. *Fint*, where the course and practice of the United States Circuit court for the northern district of Illinois, were the same as at the entry of that decree, and this court will take judicial notice of that fact.

Oliver v. *Palmer & Hamilton*, 11 Gill. and J. (Md.), 426.

Contee v. *Pratt*, 9 Md., 67.
Newell v. *Newton*, 10 Pick. (Mass.), 470.
March v. *Commonwealth*, 123 Mon. (Ky.), 25.
Chitty v. *Deudy*, 3 Ad. & E., 319.
United States v. *Teschmaker et al.*, 22 How., 392.
Romero v. *United States*, 1 Wall., 721.
1 Greenl. Evidence, Secs. 6 and 6*a*.

The decision of this court in *Brine* v. *Insurance Company* has been expressly and repeatedly re-affirmed by it.

In the case of *Orvis* v. *Powell*, appealed from the same circuit, the decree made no provision for redemption after sale, as required by the statute of Illinois. And this was one of the principal errors assigned. The court says:

"We decided in *Brine* v. *Insurance Company*, 96 U. "S., 627, that a decree of foreclosure in the Circuit court "of the United States for the district of Illinois, which "gave no time for redemption after sale, *was erroneous* "*and must be reversed.* The larger part of the briefs of sev- "eral counsel in this case is devoted to a consideration of "the question there decided. It is sufficient to say that "we are satisfied with the soundness of the opinion given "in that case and it must govern the one now before us."

Orvis v. *Powell*, 98 U. S. Reports S. C., 178.

In a still later case, on appeal from the same court, this court held that the lower court erred in not according to the defendants the right of redemption after the sale ordered by the master, according to the provisions of the

statute of the state, and that *for this error the decree must be reversed.*

Swift v. *Smith*, 102 U. S. Reports, S. C., 450.

The case at bar is still stronger than that of *Brine* v. *Insurance Company*, because the appellant in his answer to the bill expressly claimed the statutory right of redemption and prayed the same advantage of the answer as if he had pleaded or demurred to the bill of complaint. (Transcript of Record, page 12.) But this right was denied to him by the entry of a decree which made no provision for such redemption.

For these reasons it is confidently submitted that the decree of foreclosure entered in this cause January 2, A. D. 1877, must be reversed.

II.

The decree entered July 2, A. D., 1877, confirmed the sale made without redemption, directed the master to execute a deed, barred all right of redemption, and ordered that the purchaser be let into possession; and for all of these reasons it was erroneous, and should be reversed.

This court suggested, in the first case in which the main question at issue was presented to its attention, that it would seem that the appropriate time to raise this question would be on the confirmation of the report of sale, and the order for a deed to the purchaser.

Brine v. *Insurance Co.*, page 632.

This course has been pursued here, and this appeal is taken not only from the decree of foreclosure, but from the decree confirming the report of sale and ordering deed to be delivered to the purchaser. And if there were any question as to the nature of the course and practice of the court below at the time of the entry of the decree of foreclosure, the subsequent proceedings, as embodied in the decree of confirmation, would clearly show it. And it follows, from the authorities cited, that the decree of July 2d as well as the decree of January 2d was wholly erroneous, and must be set aside.

In a very recent case in this court, where it is held that a party to such a decree who did not appeal, but brought a bill of review after the time of redemption had expired, had lost his remedy. But says the court: "If appellant "had appealed from the original decree to this court, his "remedy was plain, and the decree would have been re-"versed. The same result would probably have followed "an appeal from the order confirming the sale, and cut-"ting off the right to redeem."

Burley v. *Flint*, No. 544 October Term, 1881.

C. L. N., Vol., XIV., p. 237.

As the appellant has appealed from both the original decree and the order confirming sale and cutting off the right to redeem, there would seem to be no question but that both must be reversed.

III.

The decree should provide for an accounting as to the rents and profits received by appellee as mortgagee in possession.

It appears from the record that the original mortgagee became the purchaser of the property affected by the decree, took a deed therefor, and was let into possession more than five years ago, to wit: on July 25, 1877. (Transcript of Record, 17–20.)

Under the law of Illinois a mortgagee in possession must account for the rents and profits actually received, or which might have been received by reasonable care and prudence.

McConnell v. *Holobush*, 11 Ills., 61.
Hitchcock v. *Fortier*, 65 Ills., 239.

We submit, therefore, that in any new decree to be entered by the court below, it should be provided that the appellee must account for the rents and profits received by it, or which might have been received by it by reasonable care and prudence while mortgagee in possession.

IV.

The position of appellant is not affected by the expiration of the statutory time of redemption.

It can hardly be seriously claimed that the appellant coming to this court upon a direct appeal, prayed to reverse the erroneous decrees in this cause, can be deprived

of his remedy because the statutory period of redemption has expired pending the appeal.

And yet this apparently is the only pretense upon which appellee can resist this application. And if this be resorted to, it doubtless will be based upon some of the language in the decisions of *Suitterlin* v. *Conn. Mutual Life Insurance Company*, 90 Ill., 491, and *Burley* v. *Flint*, United States Circuit court, No. 544, October term, 1881. But the most cursory examination of those cases will show the radical difference between them and the case at bar.

The Suitterlin case was not a proceeding by appeal to the Appellate court to reverse the erroneous decree of the court below, but a proceeding in another forum, where the decree could not be attacked collaterally, to redeem from the mortgages which had been foreclosed. It really sought only to assert the statutory right of redemption under the decree and sale as made. And, to quote from the opinion of this court in the case of *Burley* v. *Flint:* "The Supreme court of Illinois, in the "case of *Suitterlin* v. *The Conn. Mutual Life Insurance* "*Company*, while recognizing the doctrine of the case of "*Brine* v. *The Insurance Co.*, holds that *a party seeking* "*to redeem under such a decree and sale as the one before us*, "can only do so by making the offer within the time pre- "scribed by the statute, and cannot do so afterwards." Now in the case at bar, the appellant is not seeking to redeem under the decree and sale complained of, but is seeking to have both set aside for manifest error in them. He is not here to assert his statutory right of redemption but to have the error in the proceedings which he has insisted upon from the outset, reviewed and corrected. Under a proper decree, if the amount found to be due is

not paid and a legal sale is had, he may desire to avail himself of his statutory right to redeem, but not under the erroneous decree and sale in question.

Again, the case of *Burley* v. *Flint* was one in which the appellant had filed a bill of review, seeking to reverse so much of the former decree of the Circuit court as denied the statutory right of redemption given by the laws of Illinois in regard to the land sold under such decrees. This court says in its opinion in that case: "He (the appellant) did not see proper to follow such a course, but "*seeks by this bill of review to let the original decree* "*stand, to let the sale stand, but to have a declaration of* "*the court that the order foreclosing the statutory right of* "*redemption be reversed.*" But in the case at bar the appellant does not seek to let the original decree on the sale stand. He attacks both, and prays his appeal to reverse and set them aside. He has done exactly what this court says the appellant in *Burley* v. *Flint* should have done. "If appellant had appealed from the original decree to "this court, *his remedy was plain and the decision would* "*have been reversed.* The same result would probably "have followed from an appeal from the order confirming the sale and cutting off the right to redeem." The appellant here has appealed from both the decree and the order, within the provisions of the statutes of the United States, which provide that an appeal shall be allowed in a case involving the amount of this one, and that the Supreme court is required to receive, hear and determine such appeals, if taken within two years after the entry of the decree or order complained of.

U. S. Rev. Statutes, 1878, Secs. 692, 1008.

Where an appeal was docketed and dismissed under

the rules of this court, because the record was not filed in time, the court says:

"It is proper to add, in order to prevent mistake on this "subject, that the only effect of docketing and dismissing "a case under this rule, is to enable the party to proceed "to execute his judgment in the court below. It removes "the bar to further proceedings in that court, and nothing "more. And after the case has been docketed and dis- "missed, the party against whom the decree was rendered "may still at any time *within five years from the date of* "*the decree*, take a new appeal in the inferior court, and "if he files the transcript of the record in this court "within the first six days of the term next ensuing his "appeal, the appeal will be valid, *and the case as fully* "*before this court* for examination and *revision, as if it* "*had been brought here at the first term.* * * * * "And if the appellee after the case is docketed and dis- "missed proceeds upon the decree of the district court "and obtains a patent for the land, *his title will still be* "*subject to the decision of this court*, if the government "shall hereafter bring up the case within the time limited "by law."

The United States v. *DePacheco*, 20 Howard, 261.

So in the case at bar the appeal, though taken at the very end of the statutory period of appeal, is as valid and the case as fully before the court for examination and reversion as if it had been brought here at the first term. And although the appellee has proceeded upon the decree of the court below and obtained a deed for the land, his title is still subject to the decision of this court, the appellant having brought up the case within the time limited by

law. Even appellee cannot pretend that, if the appeal had been taken and the case heard at the first term of this court following the decree, namely, in October, 1877, the statutory period of redemption could have cut any figure in the case. Yet the appellant under the above decision, is in precisely that position now.

It seems clear, therefore, that the appellant is entitled to have the decrees complained of, and the proceedings under them, reversed and set aside, and the cause remanded, with a direction to the lower court that in any new decree a provision shall be made requiring the appellee to account for the rents and profits of the property in question, during the period of its occupancy of the same as mortgagee in possession.

EDWARD G. MASON,

Counsel for Appellant.

16-163

SUPREME COURT of the UNITED STATES,

OCTOBER TERM, A. D. 1882.

EDWARD G. MASON,
Appellant,
v.
THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY,
Appellee.

Appeal from the United States Circuit Court for the Northern District of Illinois.

Brief for Appellant, in Reply to Brief and Supplemental Brief for Appellee.

EDWARD G. MASON,
COUNSEL FOR APPELLANT.

PRESS OF BEACH, BARNARD & CO., 104 RANDOLPH STREET, CHICAGO.

SUPREME COURT of the UNITED STATES,

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EDWARD G. MASON,
Appellant,
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THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY,
Appellee.

Appeal from the United States Circuit Court for the Northern District of Illinois.

Brief for Appellant, in Reply to Brief and Supplemental Brief for Appellee.

I.

THE DECREE OF JANUARY 2ND, 1877, IS ERRONEOUS.

The appellee in his original brief admits that the decree of foreclosure and sale in this cause "was entered according to the usual course and practice of the Circuit courts of the United States in the Northern District the same as used at that day, the 2d January, 1877." He admits that "the decree in this case was not so worded (as required by the decision in *Brine* v. *Insurance Company*) as this proceeding took place prior to the decision of this court in the Brine case."

There would appear, therefore, to be no controversy as to the character of this decree, nor as to the errors in

it. And it follows, that it must be reversed upon the authority of the cases already cited of *Brine* v. *Insurance Company; Orvis* v. *Powell*, and *Swift* v. *Smith*.

It has been already shown that the case at bar presents a still stronger case than any of these, for the reason that the appellant in his answer to the bill expressly claimed that no decree should be entered without provision for redemption, but was denied this right by the court below. The appellants first point, therefore, seems to be abundantly established. And this in reality disposes of the case, since the decree of July 2 must fall with that of January 2, unless appellee has shown some reason to the contrary. It is curious to notice, that appellee, while alleging in his supplemental brief "some gross misappre-" hensions as to the specific nature of the questions raised " and settled in other cases in this court," can only attempt to sustain this position by expressly contradicting himself. As appears above, he admits at the outset that the practice of the court below, at the time of the entry of the decree of January 2, was precisely the same as when the Brine decree was entered (appellee's original brief, page 2). But, in his supplemental brief, he denies that the practice conceded to exist in that case existed in this case (supplemental brief, page 3). There can be, however, no doubt upon this point. The date of the entry of the decree shows what the practice was; this court will take judicial notice of it, and the subsequent decree expressly sets forth and establishes it.

Appellee states that if the master had made a certificate providing for redemption instead of a deed, there would have been no error in the record, and asks how it appears that he did not, in fact, give such a certificate. I reply that had this been the case, there would still have been a

grave error in the proceedings, inasmuch as the possession of the premises was delivered to the purchaser long before the expiration of the time of redemption. But furthermore it appears directly from the record that no certificate providing for redemption could have been issued by the master, because he advertised and made a sale absolute, which was confirmed, and he was ordered to execute a deed of the premises to the purchaser who was let into immediate possession. (Transcript Record, pages 17, 18 and 20.)

II.

THE DECREE OF JULY 2, 1877, WAS ERRONEOUS.

Appellee, furthermore, entirely overlooking appellant's position as to the decree entered July 2, 1877, has been led into a direct mis-statement of appellant's argument. He says "the complaint is not made that the right to redeem "was denied or that a deed was executed and appellant "refused any recognition of his right to redeem, or that "he was deprived of his property before the twelve or "fifteen months expired." But appellant expressly complained that the right to redeem claimed in his answer was denied him, and that the decree of July 2 was erroneous, because it confirmed a sale made without redemption; because it directed the master to execute a deed; because it barred all right of redemption; and because it ordered that the purchaser be let into possession (Appellant's original brief, page 7); and he still insists upon these errors, which appellee apparently concedes to be serious if not fatal.

III.

THIS APPEAL IS NOT AFFECTED BY ANY STATE STATUTE.

The argument and authorities of appellee in his original brief were anticipated in the original brief of appellant. They are simply reiterated in appellee's supplemental brief. His position at the outset is that "appellant "never availed himself of his statutory rights within the "statutory time allowed to mortgagors so as to obtain his "*locus standi* in this court for the purpose of seeking a "reversal of the proceedings." His position at the close is that "the time within which defendant (appellant) can "redeem by the statute of Illinois is long since passed, "and he has made no offer to redeem." And the fact that the statutory time of redemption had passed before an appeal was taken in this case is after all the only one upon which appellee relies, and unless appellant is barred by this, he is entitled to the relief asked.

Appellee entirely fails to comprehend the difference between the positions of a party seeking to exercise a statutory right, and of a party appealing from erroneous decrees, and ignores any distinction between a bill to redeem, or a bill of review, and a direct appeal. The appellant is not here seeking to redeem from a sale, but to reverse the decrees ordering and confirming the sale. He has prayed his appeal in apt time, and his right granted to him by the statutes of the United States regulating practice in its courts, cannot be lessened or limited by a state statute on another subject. If appellee were right, a party complaining of a void sale, must recognize it and redeem from it before he can be heard—truly a monstrous doctrine! And there is no conflict here between state and

national laws. If the appellant had filed a bill to redeem as in the Suitterlin case, or a bill of review to reverse so much of the former decree as denied the right of redemption, as in the case of *Burley* v. *Flint*, then the Illinois statute might be taken into account. But he has done neither. And those cases, as he has already shown, are directly in his favor, pointing out and approving the course he has pursued. And the court cannot refuse to reverse the decrees below upon this ground, unless it is prepared to divide the statutory period of appeal, and hold that he who comes here seeking a remedy for admitted errors below, within the first six months of the two years, shall have redress, while he who comes within the last six months, shall be denied it.

IV.

THE ERRORS BELOW WERE INJURIOUS TO APPELLANT.

It remains only to notice the assertion in appellee's original brief, that if there was any error it did appellant no harm, and he had no ground upon which to reverse the decree.

Whenever it is sought to apply the rule that this court will not reverse where an error works no injury, *it must appear beyond doubt* that the error complained of neither *did prejudice nor could have prejudiced* the party against whom the error was made.

Deery v. *Cray*, 5 Wallace, 807.

It appears from the record that the property in question is situated in the city of Chicago, and was pledged in 1874 to secure the sum of $20,000, together with its rents, issues and profits. (Transcript of Record, page 4.)

Presumably, therefore, it was of at least the value of twenty thousand dollars, and was improved and yielding rent. Under the decrees complained of it was sold without redemption, an absolute deed of it was issued, the appellant was thereupon deprived of possession, and his equity of redemption was declared to be barred. The use of the property was therefore taken from him, admittedly fifteen months before it rightfully should have been in any event. He has been deprived of its rents and profits during that period and ever since, and his title was so clouded that it was impossible, by conveyance or mortgage, to obtain funds to pay appellee's debt. It can hardly be contended, therefore, that appellant has not been gravely and seriously injured by the errors in the decrees appealed from.

Appellee does not controvert in either brief the position of appellant as to a provision in any new decree for an accounting for rents and profits. And appellant asks that upon all the grounds submitted the decrees below may be reversed and the cause remanded, with a direction to the court below to insert such a provision in any decree that may hereafter be entered.

EDWARD G. MASON,
Counsel for Appellant.

16-163

SUPREME COURT U.S.
FILED
OCT 29 1882
JAMES H. McKENNEY, CLERK

SUPREME COURT of the UNITED STATES,

OCTOBER TERM, A. D. 1882.

EDWARD G. MASON,
Appellant,
v.
THE NORTH WESTERN MUTUAL LIFE INSURANCE COMPANY,
Appellee.

No. 79.
Appeal from
Northern District
of Illinois.

BRIEF OF APPELLEE.

THOS. HOYNE,
COUNSEL FOR APPELLEE.

PRESS OF BEACH, BARNARD & CO., 104 RANDOLPH STREET, CHICAGO.

SUPREME COURT of the UNITED STATES,

OCTOBER TERM, A. D. 1882.

EDWARD G. MASON,
Appellant,
v.
THE NORTH WESTERN MUTUAL LIFE INSURANCE COMPANY,
Appellee.

No. 79.
Appeal from
Northern District
of Illinois.

BRIEF OF APPELLEE.

The appellees in this case filed their bill in the court below to foreclose a mortgage made by Benjamin F. Murphy and wife to secure a loan of $20,000 on certain real estate, and the appellant, Edward G. Mason, was made a party defendant as a voluntary assignee of the mortgagor under a general assignment made by Murphy for the benefit of creditors, in April, 1875.

The bill of foreclosure was filed against Mason, Murphy, and all other parties having any interest, upon the 10th day of December, A. D. 1875, in the Circuit court for the Northern District of Illinois.

The premises are described as the South half of Lot 17, Block 26, in Gurley's Subdivision of Blocks 24, 25, 26, 27,

28, in the Assessor's Subdivision of the Southwest quarter of Section 22, Township 39, R. 14, E. 3d P. M. Also, the East 150 feet of Lot 23, in Gurley's Subdivision of Blocks 25, 28 and 38, in Canal Trustees' Subdivision of W. ½ of Sec. 27, T. 39, Range 14 East.

The decree of foreclosure and sale was entered according to the usual course and practice of the Circuit courts of the United States, in the Northern District, the same as used at that day, the 2d January, 1877. The recent case *Brine* v. *The Insurance Co.*, 6 Otto, decided in October term, 1877, by this court, declares that all proceedings in such cases, within the district, should be in conformity with the statutes of Illinois, as respects property, so far as recognizing all rights of the mortgagor after a sale to make a redemption of the premises, on conformity with the statutes of that state within the time specified by those statutes. The decree in this case was not so worded, as this proceeding took place prior to the decision of this court in the BRINE case. But it will be found that appellant never availed himself of his statutory rights within the statutory time allowed to mortgagors so as to obtain his "*locus standi*" in this court for the purpose of seeking a *reversal of the proceedings*.

On the 4th day of March, A. D. 1876, Mr. E. G. Mason filed his answer, before the entry of the decree of foreclosure in this case.

On the 24th of July, 1877, the master in chancery, Henry W. Bishop, under the decree of *January 2d, 1877*, filed his report of sale of the premises made on the 8th day of May, 1877, to complainant, as the highest bidders at the sale, and after having published all the notices of sale in the manner and for the time required by the said decree of foreclosure.

See report and notices attached. (Record, pages 17, 18, 19).

On the 25th day of July, 1877, it was ordered that the said report of sale by the master be confirmed, unless cause should be shown to the contrary within five days thereafter. (Record, 19.)

And finally on the 31st day of July, 1877, a decree was entered which cofirmed the sale: and a deed of the premises was ordered to be delivered to complainant as purchaser of the premises at said sale. (Record, 20.)

Now, it will appear, that from these decrees, the appellant took his appeal on the *31st day of* DECEMBER, A. D. 1878 ! ! He now comes here to seek a reversal of the decree entered on the *2d January, 1877, and to set aside* a sale made in conformity therewith on *the 8th of May, 1877, and* FINALLY confirmed by decree of the court on the *31st day of July, 1877!!!*

Now, it must be obvious that in clearing up this case, there is only a *single*, and only ONE single point for any discussion!

I.

The only question for this court to decide, if the writer may be allowed to state what the court is called upon to decide, is this, viz:

Whether a party, after *two years* have elapsed since a decree of foreclosure, and *seventeen months* after a sale made in conformity therewith, can have a standing in court to move a *reversal of all such proceedings*, without moving himself or taking any steps to secure the remedy within the *statutory time allowed him to redeem* his prop-

erty from sale, because the decree of foreclosure omitted to notice those rights, which the statute of Illinois alone secured him, *irrespective* of any *decree* or *order* of the court below; "which could not delay or hinder a redemp-"tion within the time specified."

It is certainly clear that the appellant has lost nothing, and suffered nothing from the decree of foreclosure, as both the courts of Illinois and this court have declared, that the *right to redeem* property from sale, under a decree or judgment, depends alone upon the *statute*, and not upon the *decree*.

The Illinois Supreme court, deciding the case of *Suitterlin* v. *Conn. Mut. Life Ins. Co.*, 90 Ill., 491, say: "The statute "gave to the mortgagor the *right of redemption*, and he "might have exercised it. *It is not the decree that gives the* "*right to redeem*. The mortgagor does not depend *on that* "for the *right*, but upon the *statute*." And the court hold in that case, though the decree added that the sale SHOULD BE WITHOUT REDEMPTION: yet that it not having deprived the mortgagor of his statutory right, the order of sale stood the same, and the statutory time having elapsed, in which the mortgagor *did not exercise his right of redeeming*: the court say, "It is not perceived "what legal harm can have resulted to appellant from the "decree being in its present form, instead of with redemp-"tion. If erroneous only in so far as it did not allow the "statutory right of redemption, then on the settled rule it "cannot be questioned collaterally. If void, then we do "not regard that it was an obstruction to the exercise of "the right of redemption given by statute: and it is only "as affecting the *exercise of such right of redemption, that* "*there can be substantial cause of complaint*."

And the court expressly put the decision on the point, that the purchaser was *entitled to his deed*, there having been no effort for the exercise of the right of redemption, within the time fixed, made by the original owner.

The court say, in conclusion of their opinion, that the appellant has shown no equitable title to relief for having made no effort to redeem, although the order of sale was defective, by attempting to cut off the right of redemption. In fact, the decree in the count declared *that the sale should be without redemption.*

The opinion states, "that the defect in that case was "in adding to the order of sale that it should be without "redemption." (p. 491.)

This court has reviewed the above case, and affirmed the principle decided, as authority on the local application of our Illinois statute, to mortgage sales.

> *Augustus H. Burley, assignee in bankruptcy of David Kreigh*, v. *James S. Flint, executor of Thompson I. S. Flint*, decided at October term, 1881.

Report not come to hand, but I have annexed copy of the opinion delivered by Justice MILLER.

Brine v. *The Insurance Co.*, 6 Otto., 627, has also been reviewed in the case above cited, and the court here take occasion to say, "that in the case of *Brine* v. "*The Insurance Co.*, we held it to *mean a sale without any* "*right of redemption.*"

The court, in *Brine* v. *The Insurance Co.*, do say, that the right of redemption after sale was as obligatory on the United States courts sitting in equity, as on the state courts, and that the statute which allows twelve months to the

mortgagor to redeem after a sale, and three months to a creditor, governs to that extent the mode of transferring title and becomes a rule of property.

But in that case the time for redeeming had not gone by before an appeal had been taken to assure and assert the claim. In this case that time has wholly elapsed. And the statute is no longer available to afford relief.

It will be found, as I have already said, that the sale was made on the 31st day of July, 1877, under a decree entered the 2d day of January, 1877. And not only had *twelve* months elapsed, but *two* years, less two days, since a decree of foreclosure had ordered the sale, and *seventeen* months since the sale took place.

But your honorable body are aware, that in this court, since the case of *Brine* v. *The Insurance Co.*, you have reviewed the case in a later decision made in October term, 1881, not as yet issued in a volume of reports. That case, as before stated, is, *Aug. H. Burley, assignee, &c.*, v. *Flint, executor of Thompson I. S. Flint.*

The Controversy Settled!

In this case, a decree ordered a sale according to the usual course and practice of the court, which, in the case of *Brine* v. *The Insurance Company* (96 U. S. Rep., 627), was held to mean a sale without any *right of redemption*. Burley, nearly two years after, sought by bill of review, to reverse so much of the former decree as denied the statutory right of redemption as given by the laws of Illinois.

And this court affirming the decree of the court below, denies to him the right of redemption, on the ground that

it had ceased to exist, as he had failed to exercise his right within the time allowed by the statutes of Illinois.

In this case the court here say:

"The appellant in his bill, does not seek to reverse the "order of sale to satisfy the amount found due to Flint; "nor does he ask that the sale made under that order be set "aside and a new sale ordered: nor does he offer to re- "deem by payment of the amount found by the court to "be due on the original mortgage; nor does he offer to "pay the amount bid at the sale by Flint, on the mort- "gage, or tender any sum in court as assurance that he "will do so. He simply asks that so much of the decree "as forecloses this statutory right to redeem may be re- "viewed and reversed."

All which was said of that case in the opinion of this court, delivered by the eminent associate justice who writes it, is true of the appellant in this case. In *that* case, the appellant sought to *set aside* the sale by bill of review. In *this* case, the appellant seeks to do the same thing by a *reversal* on his appeal.

But we may further follow that opinion to answer the same question put by this court, viz: "What will an order "of reversal avail him? *The decree, and sale under it, will "still stand good. The time within which defendant can re- "deem by the statute of Illinois is long since passed, and "he has made no offer to redeem.*"

In that case, the sale was made twenty months after the date of sale and master's report; the sale being made in February, 1878, and the bill of review filed October 17, 1879.

In this case, the sale was made *July 31, 1877*, and the appeal taken December 30, *1878*; that is to say, not only

twelve months have elapsed, within which time the owners could have redeemed under the statute of Illinois, but five months more have elapsed, and within that time no other person interested as creditor or otherwise, attempted to redeem by payment of the mortgage money or decree.

Thus again—referring to the case of *Burley* v. *Flint*, we repeat the language, how can it avail appellant to get the order of sale reversed, since his time for redemption was passed, before he filed his appeal. Can this court now make a decree, "That he *now has* the right to *redeem*, in "the same manner as if he had tendered the money "within the twelve or the fifteen months which the law "allowed for that purpose?" "We do not think," (this court say) "that we should decree that he may now re-"deem on payment of the sum bid, and interest. If he "designed to avail himself of the right of redemption "purely statutory, he should have brought himself within "*the terms* of the *statute*." And this court say also:

"Such is the view of the case precisely similar taken "by the Supreme court of Illinois.

"That court, in the case of *Suiterlin* v. *Conn. Mutual* "*Life Insurance Company*, 90 Ill., 483, while recognizing "the doctrine in the case of *Brine* v. *The Insurance Co.*, "6 Otto. U. S. Rep., 627, holds, that a party seeking to re-"deem under such a decree and sale as the one before us, "can do so only by making the offer within the time pre-"scribed by the statute, *and cannot do so afterwards*. We "concur in that view, and affirm the decree of the Circuit "court in this case."

Burley, assignee, v. *Flint*, see 9 Bissell, 204.

We have been permitted to use the brief submitted in the case of Burley, assignee, etc., and we take occasion

to cite some other cases showing that the principle was well settled in Illinois. The Supreme court of the state, in construing the act of 1843, which gave redemption from sales of mortgaged premises under foreclosure proceedings, as in cases of sales under executions at law, held that a defendant to a bill of foreclosure by failure to have a sale set aside until the period of redemption expired, waived all technical objections.

Walker v. *Schum*, 42 Ill., 462.

And in 1874, the court held on a direct appeal to reverse a decree of foreclosure that while the more formal mode of decreeing a foreclosure is to direct that the mortgagor pay the amount due, and in default of payment that the master sell the land, and if not redeemed that then all the rights of defendants be foreclosed, yet that the right of redemption provided by the statute, will not be considered as denied by a decree, although it may declare a foreclosure without reference to the subject of redemption.

Boester v. *Byrne*, 72 Ill., 466.

No Argument without a Controversy!

If there be any matter left in this case upon which to construct an argument, it will be one where there is no controversy. Is there anything to be controverted?

The case of *Brine* v. *The Insurance Co.* was for some time a subject of grave and anxious discussion among members of the profession, as without explanation from the same authority whence the opinion emanated, it seemed as if a door had been opened for assault upon all titles to property made through "*judicial sales.*" Any defect of form in a decree, it was thought, would enable

a *party in default* to re-open every case, where transfers and titles of property had long been finally disposed of and forever settled. But the recognition in the recent case of *Burley* v. *Flint* of the decision construing the statute of Illinois *quieted* public apprehension, and restored the confidence, possessed of which this AUGUST TRIBUNAL has ever been listened to with reverence and respect, as the supreme arbiter of all controversies affecting private and public rights in all states, and establishing the rules of decision in all courts of the Union.

Let me again quote from a former brief in the case of *Burley* v. *Flint*, filed by appellee.

"It is clear that the Supreme court of Illinois in the Suitterlin case has, since the court decided the *Brine* case, placed a construction upon the Illinois statute providing for redemption from foreclosure sales which has had a tendency to quiet titles acquired under judicial proceedings in the federal courts in this state, and it would be anomalous if the federal courts should hestitate to follow that construction, and thus protect their own decrees and those who have relied upon them."

"It is not improbable that the state court, aware of the practice in foreclosure proceedings so long prevailing in the federal courts in Illinois prior to the decision in the *Brine case*, and mindful of the uncertainty, doubt and difficulty to result from a ruling that titles so acquired were without validity, saw fit, as a matter of public policy to say, as it has in the Suitterlin case, that the lapse of fifteen months after foreclosure sale should leave the proceedings no longer the subject of successful attack merely because of a provision in the decree which was without legal force, which did not abridge the statutory

right of redemption, and which, therefore, was mere surplusage."

The appellant in the case was never *deprived of any statutory rights by the decree;* and he might, notwithstanding, have asserted his right to redeem at any time. If, therefore, there was any error, it did him no harm, and he had no ground upon which to reverse the decree.

THOS. HOYNE,
Counsel for Appellees.

HOYNE, HORTON & HOYNE.

SUPREME COURT OF THE UNITED STATES,

No. 544.—October Term, A. D. 1881.

Augustus H. Burley, assignee in bankruptcy of David Kriegh, *Appellant*,
vs.
James L. Flint, executor of Thompson J. S. Flint, deceased.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

Mr. Justice MILLER delivered the opinion of the court.

Flint, the appellee, obtained in the Circuit court of the Northern district of Illinois, on the 19th of October, 1877, a decree foreclosing a mortgage against Kriegh, the mortgagor, Burley, his assignee in bankruptcy, and others. The decree ordered a sale, according to the usual course and practice of the court, which, in the case of *Brine* v. *The Insurance Company*, 96 U. S. R., 627, we held to mean a sale without any right of redemption. Such a sale was made to Flint, and an order of confirmation, and for a deed, and for a delivery of possession, and expressly cutting off all right of redemption, was entered by the court on the 13th day of March, 1878, with a further decree against the assignee for payment, out of assets *pro rata*, of a balance not satisfied by the sale.

On the 17th day of October, 1879, Burley, the assignee, filed in the same court, but without leave, a bill of review, seeking to reverse so much of the former decree of the court as denied the statutory right of redemption given by the laws of Illinois in regard to the land sold under such decrees.

A hearing was had on a motion to dismiss this bill,

which, by consent of counsel as the record states, was to be treated also as a demurrer, and the court dismissed the bill; from which order, this appeal is prosecuted.

The appellant in his bill does not seek to reverse the order of sale to satisfy the amount found due to Filnt; nor does he ask that the sale made under that order be set aside and a new sale ordered. Nor does he offer to redeem by payment of the amount found by the court to be due on the original mortgage. Nor does he offer to pay the amount bid at the sale by Flint, the mortgagee, or tender any sum in court as assurance that he will do so. He simply asks that so much of the decree as forecloses the statutory right to redeem may be reviewed and reversed.

What will such an order avail him? The decree and sale under it will still stand good. The time within which defendant can redeem by the statute of Illinois is long since passed, and he has made no offer to redeem. The sale was made prior to the 23d of February, 1878, the date of the master's report, and the present bill filed October 17, 1879, twenty months afterwards, and at a time when by the statute both the defendant and his judgment creditors had ceased to have any right of redemption.

If appellant had appealed from the original decree to this court, his remedy was plain, and the decision would have been reversed. The same result would probably have followed from an appeal to the order confirming the sale and cutting off the right to redeem. He did not see proper to follow such a course, but seeks by this bill of review to let the original decree stand, to let the sale stand, but to have a declaration of the court that the or-

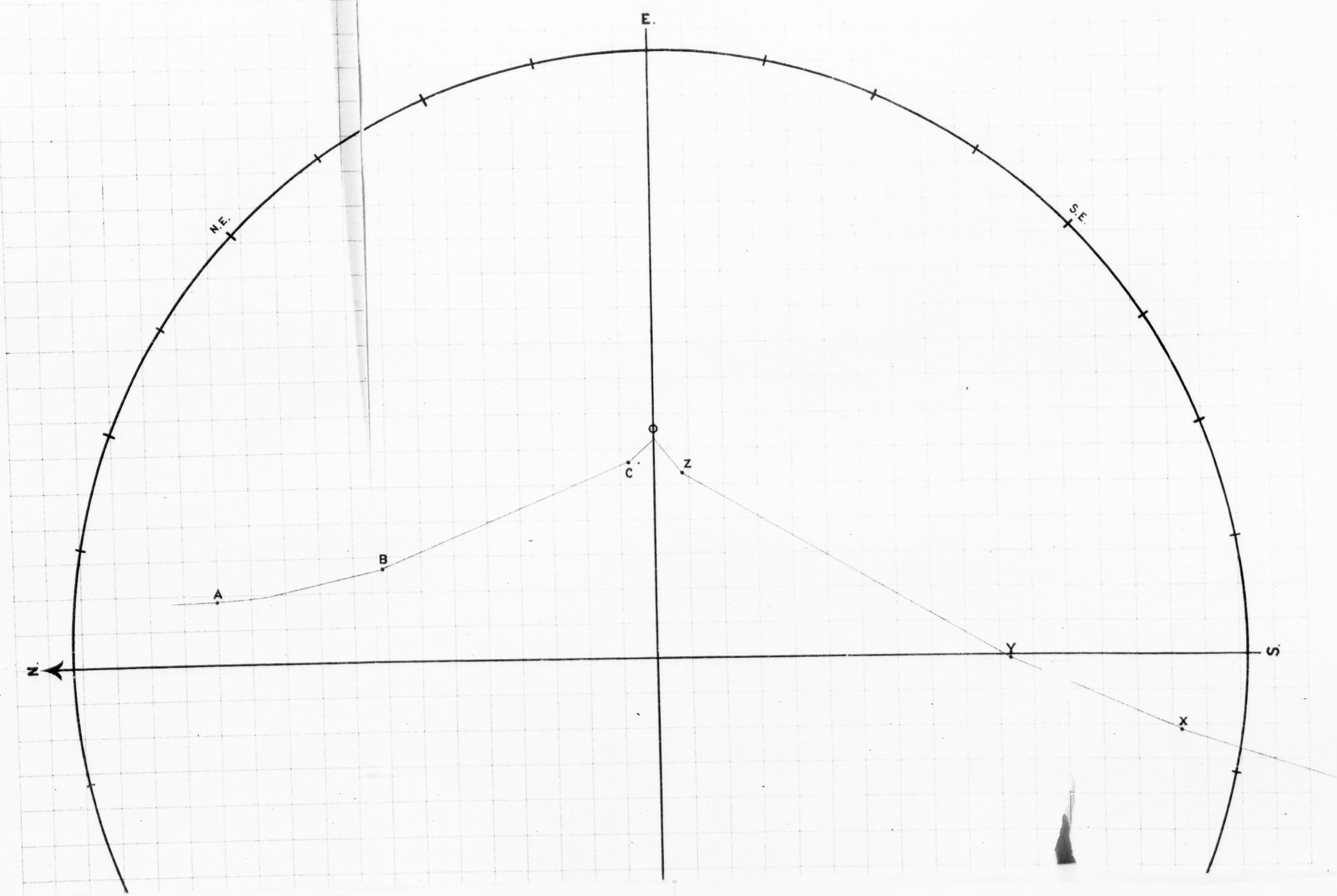
der foreclosing the statutory right of redemption be reversed.

How can this avail him, since his time for redemption was passed before he filed his bill? It would be of no use to him unless the court should go further and make a decree that he now has the right to redeem in the same manner as if he had tendered the money within the twelve or the fifteen months which the law allowed for that purpose.

We do not think that the court should decree that he may now go on and redeem on payment of the sum bid and interest. If he designed to avail himself of the right of redemption purely statutory, he should bring himself within the terms of the statute.

Such is the view of the case precisely similar taken by the Supreme court of Illinois.

That court in the case of *Suitterlin* v. *The Conn. Mutual Ins. Co.*, 90 Illinois, 483, while recognizing the doctrine of the case of *Brine* v. *The Ins. Co.*, holds that party seeking to redeem, under such a decree and sale as the one before us, can do so only by making the offer within the time prescribed by the statute, and cannot do so afterwards. We concur in that view, and affirm the decree of the Circuit court in this case.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J. W. GOSLING.

Carriage-Fender.

No. 62,406. Patented Feb. 26, 1867.

Fig. 1.

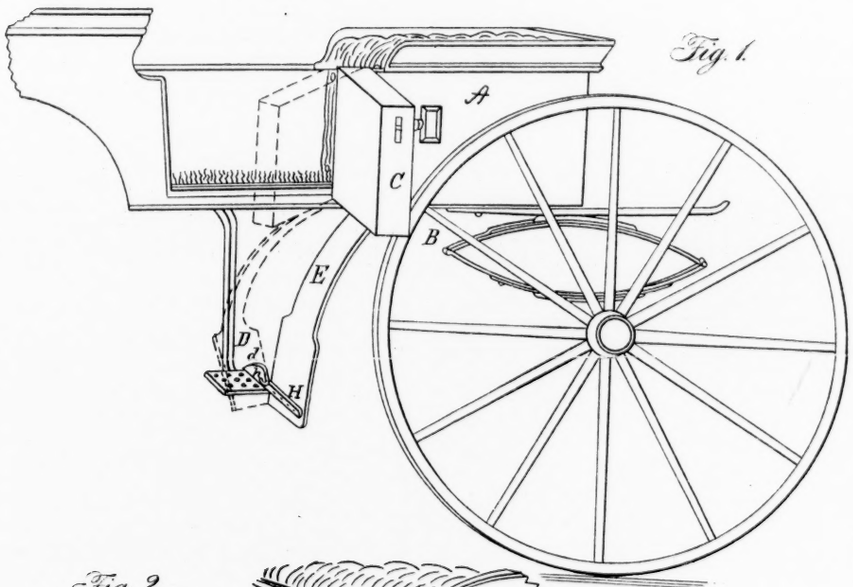
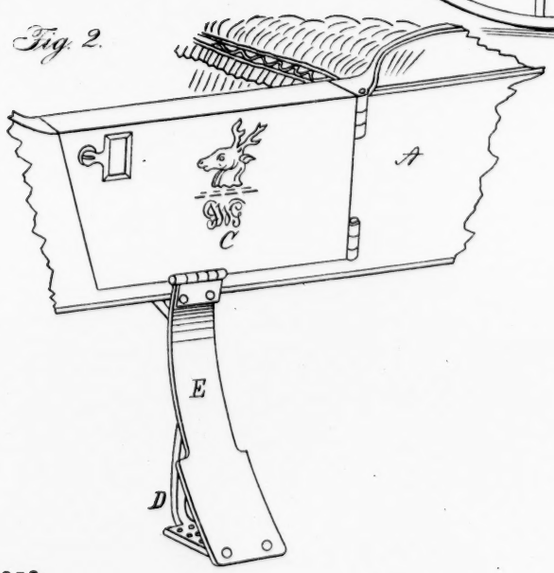


Fig. 2.



Witnesses:

H. C. Webber

Samuel Knight

Inventor:

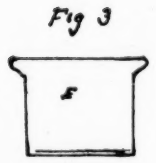
John W. Gosling

By Knight Bros

Attorneys

AM. PHOTO-LITHO. CO. N.Y. (OSBORNE'S PROCESS.)

J Ashenfelder
Carriage Fender
No. 8815 Patented Mar 23 1852



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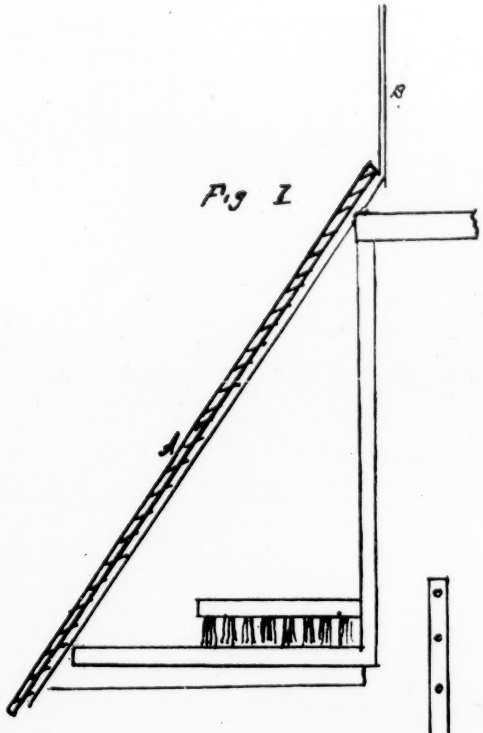
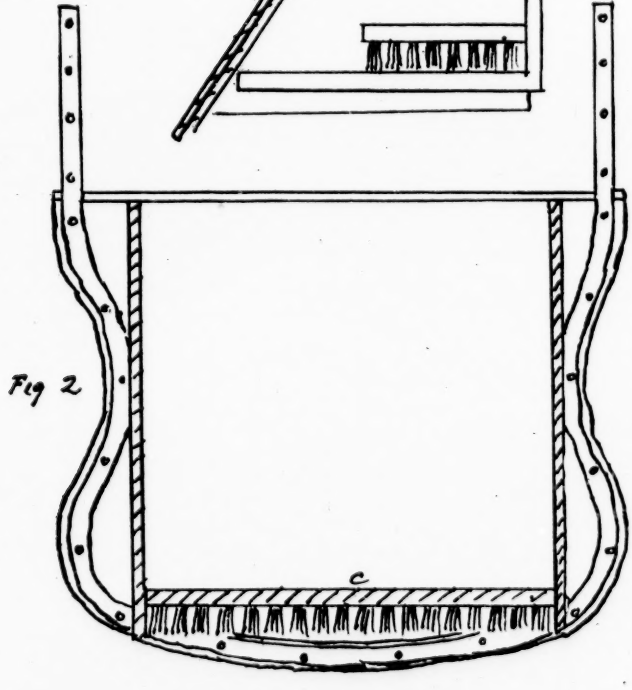




J. W. GOSLING.

Step-Covers and Wheel-Fenders for Vehicles.

No. 5,644. Reissued Nov. 4, 1873.

Fig. 1

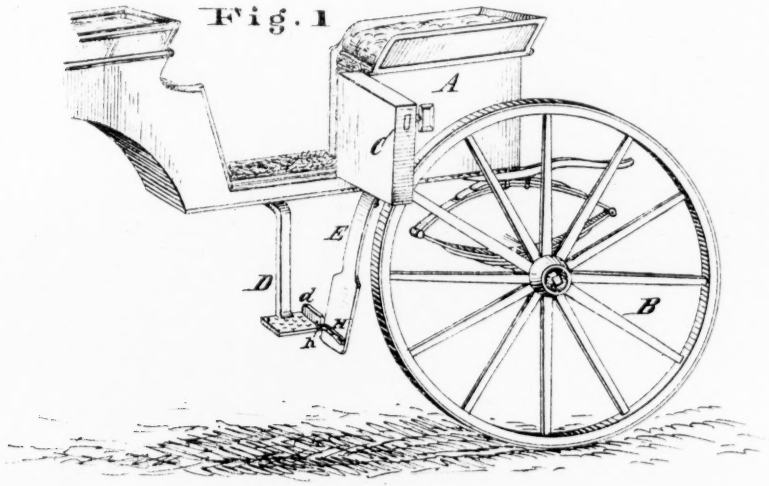
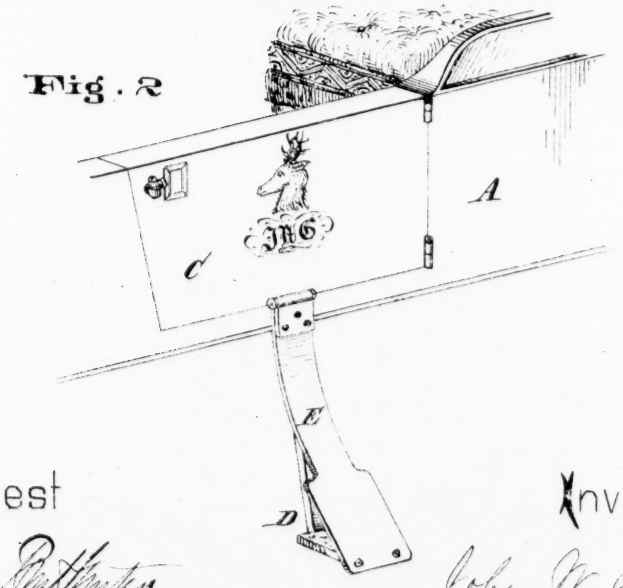


Fig. 2



Attest

Wm. Hunter

John Jones

Inventor

John W. Gosling

By F. Mitchard

Attorney

JOHN ROBERTS.

Step Cover & Wheel Fender.

Fig. 1.

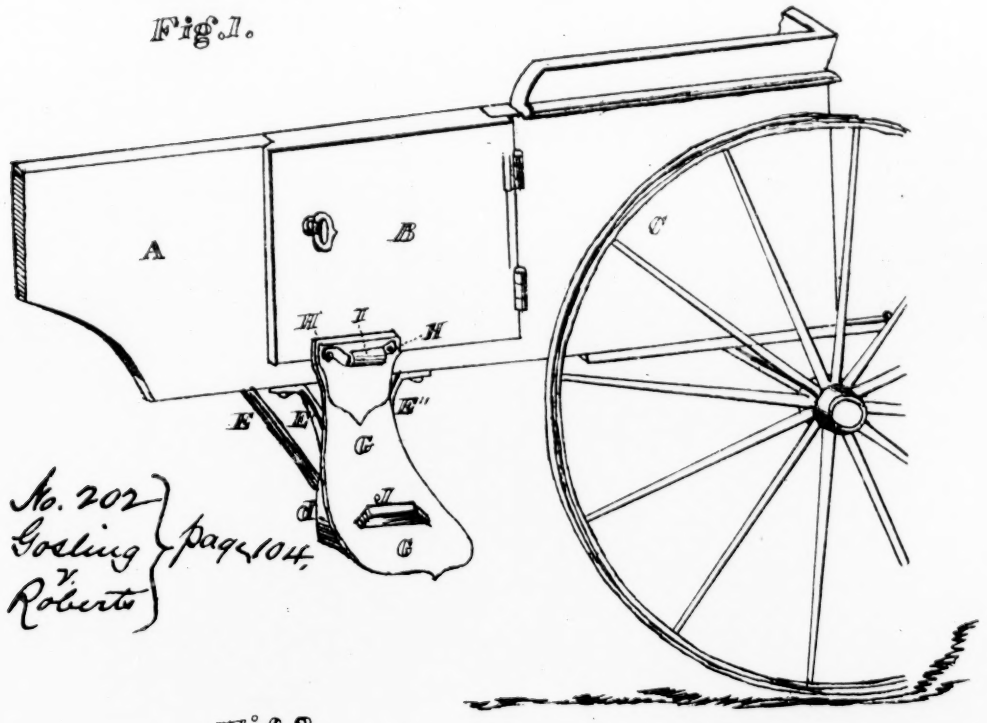


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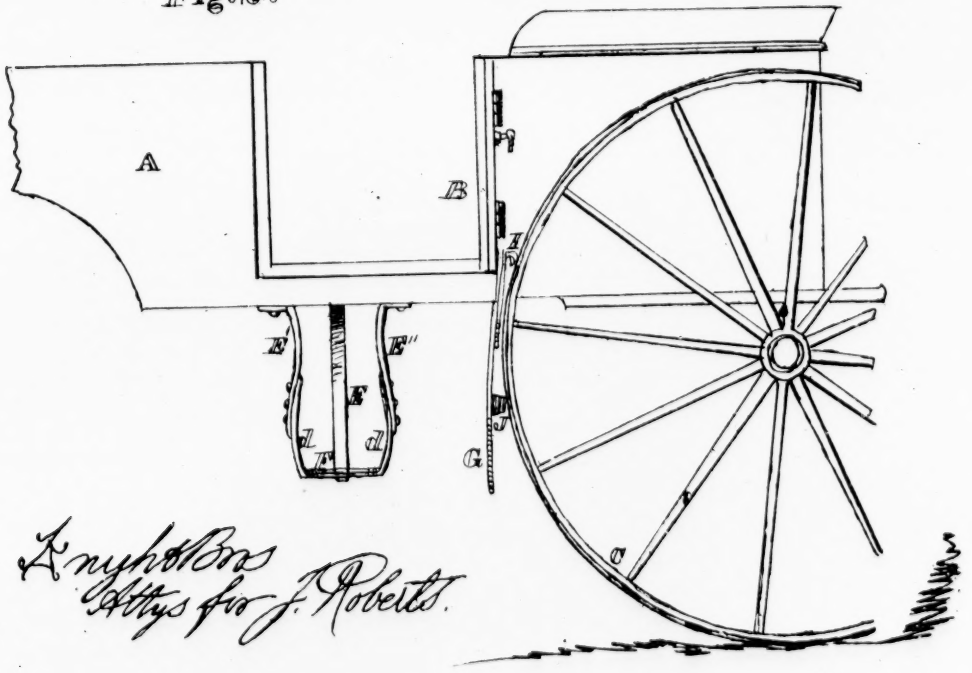
Fig. 2.



Knight Bros
Attys for J. Roberts.

(10)

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Equator Mining & Smelting Co.
v.
Hall & Marshall

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PLAT

OF THE CLAIM OF

WILLIAM P. LINN

upon the

COLORADO CENTRAL LODE

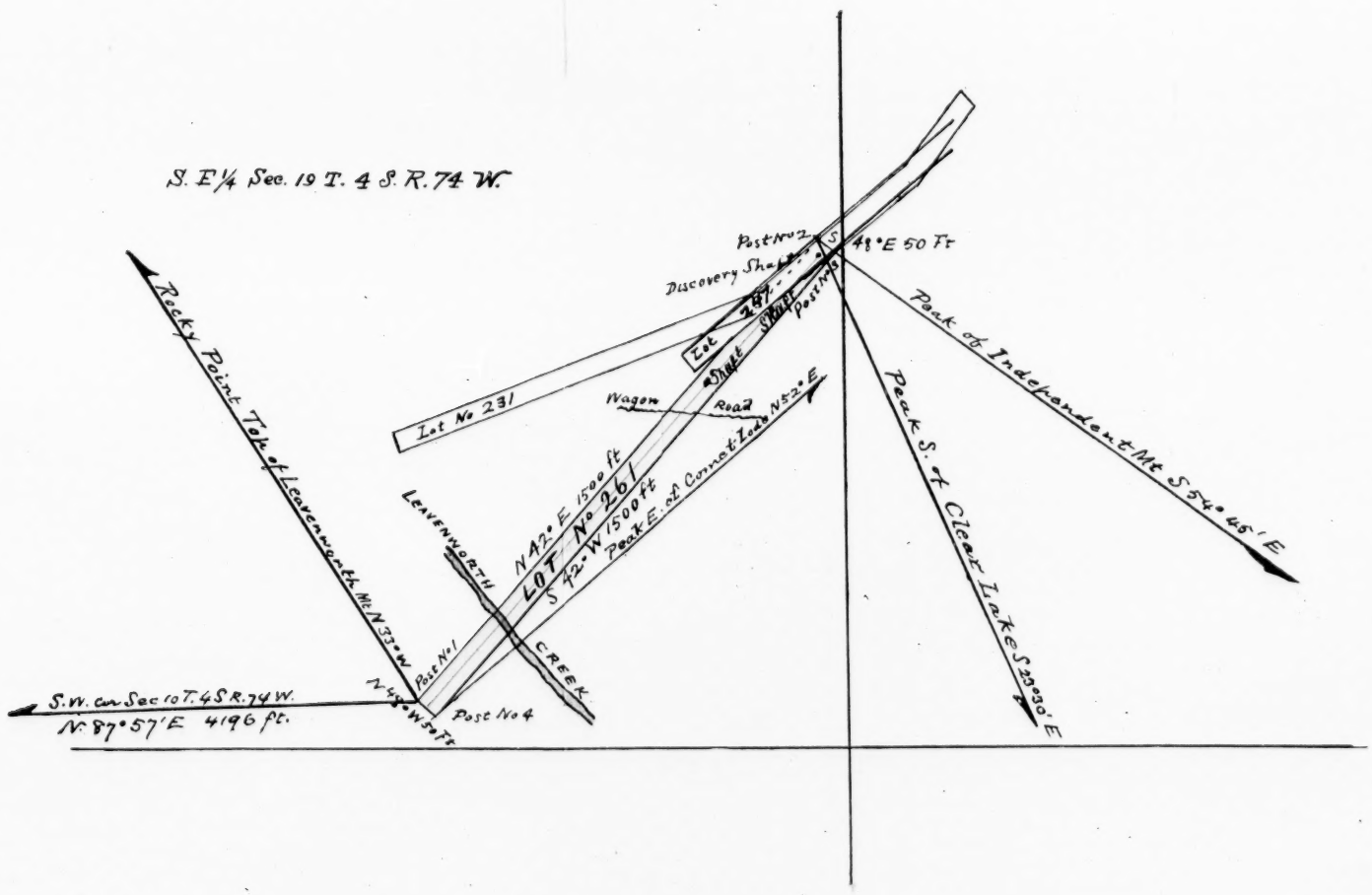
Griffith or Argentine Mining District Clear Creek County

Colorado.

Containing 10 7/100 Acres

Scale of 100 feet to the inch

VAR 15°30' E.

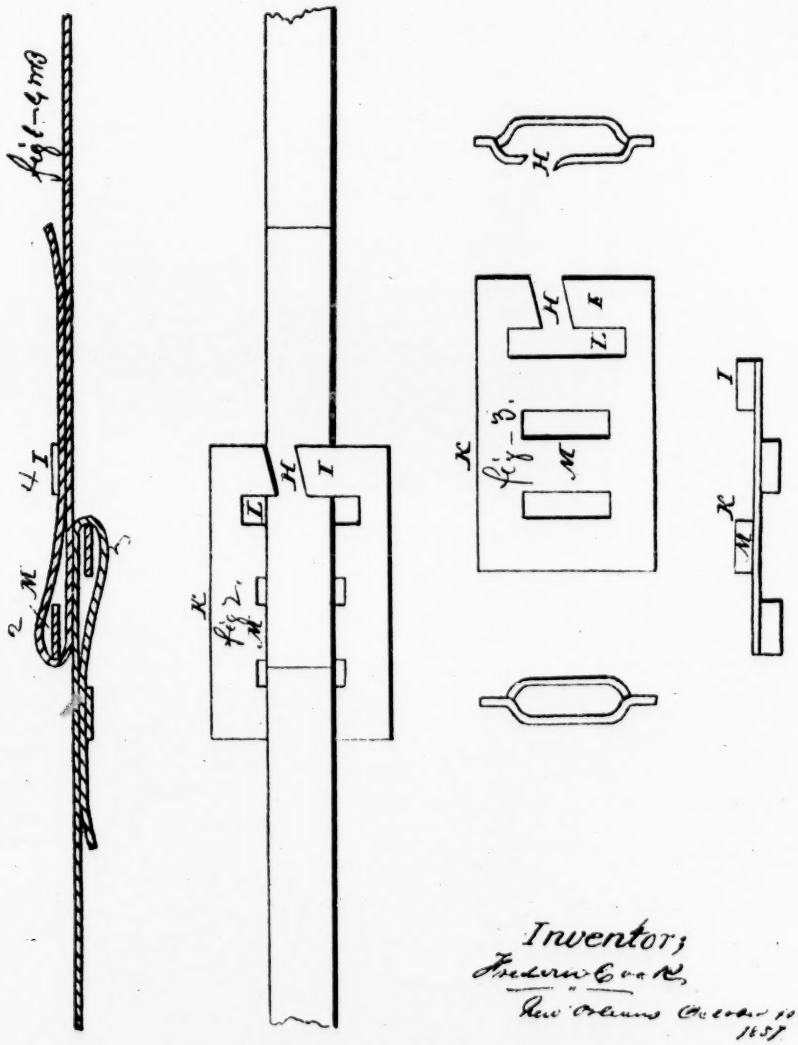


No. 312
American Cotton Tie Co.
v.
Simmons
page 68

F. Cook. Sheet 2. 2 Sheets.

Cotton Bale Tie.

No. 19490 Patented Mar. 2. 1858.



Inventor;
Frederick Cook
per
New Orleans October 19th 1857

No. 314
American Cotton Tie Co. v. Simmons
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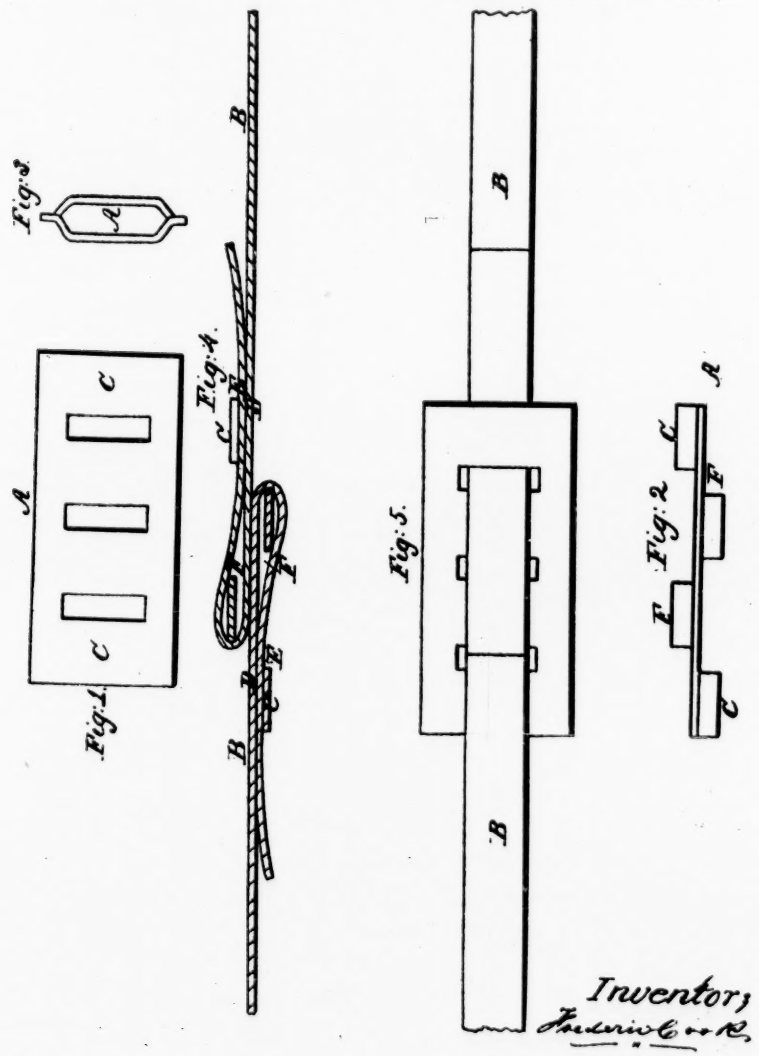
67

F. Cook. Sheet 1. 2 Sheets.

Cotton Bale Tie.

No. 19490. Patented Mar. 2. 1858.



Inventor;
Frederick Cook

No. 312
American Cotton Tie Co.
v.
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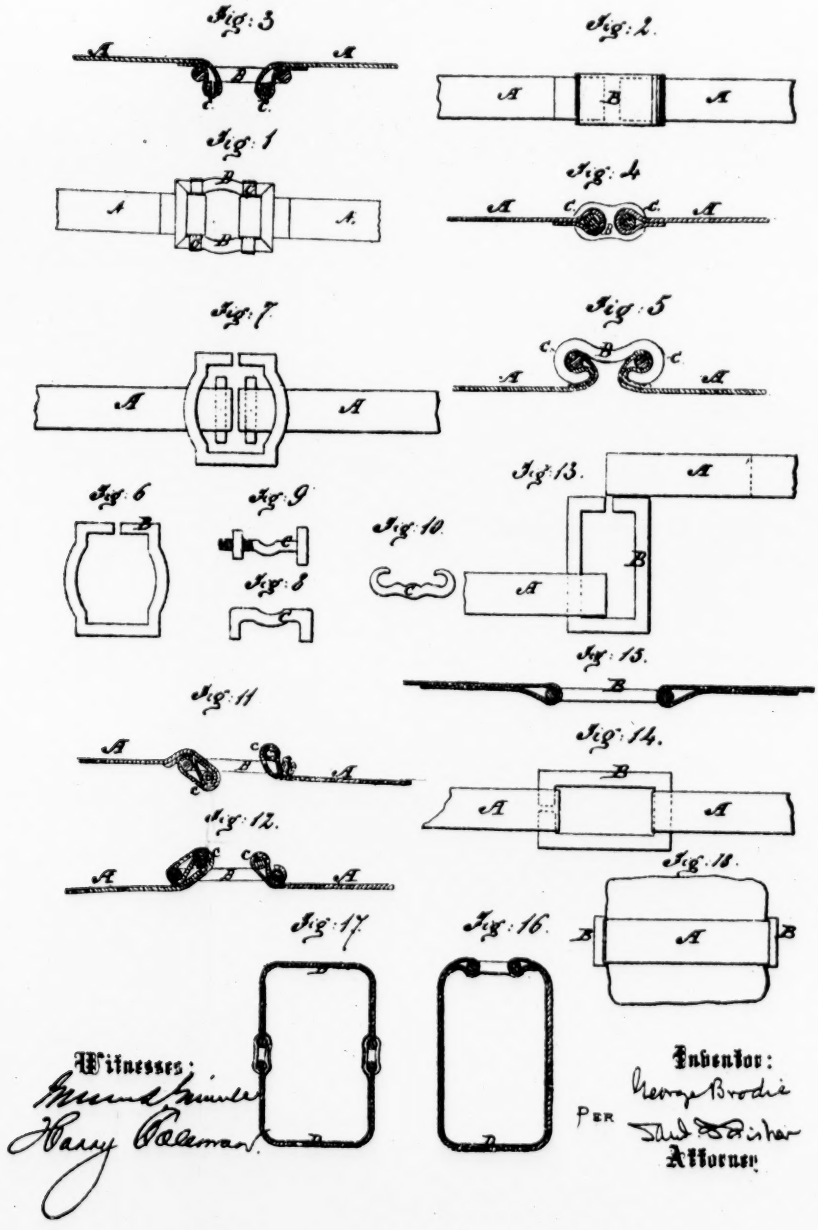
G. BRODIE.

Cotton-Bale Ties.

No. 5,333. Reissued March 25, 1873.



Witnesses:
Edmund Spinnler
Harry Coleman

Inventor:
George Brodie
Per Dodger & Fisher
Attorneys

No. 312
American Cotton Tie Co.
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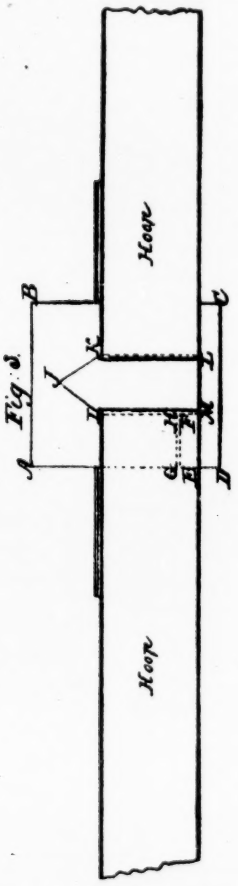
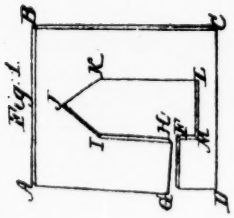
J. J. McComb.
Cotton Bale Tie.

No. 248
31252.

Patented Jan. 29. 1861.





Witnesses;
E. Eyssen
L. Hirsch

Inventor;
J. J. McComb
By atty. H. B. Strayton

Fig 1.

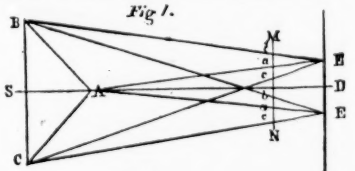
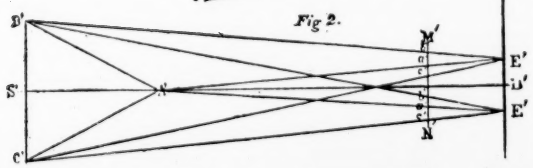


Fig 2.



wedge-shaped, and having a relief at A′ three or four times as great.

In other words, the wedge B′, A′, C′, whose dimensions, B′, C′, is equal to B. C, of the cube, would have, placed at the distance D′, S′, images *precisely like* those of the cube at the distance D, S.

Consequently the images *b. a, c*, seen under the proper visual angle, may appear to belong to any cube; but if not seen under the proper visual angle, they will appear to belong to a wedge or an obtuse figure.

This is the reason why the length of the stereoscope forms a necessary ingredient in the calculation for the parallel position.

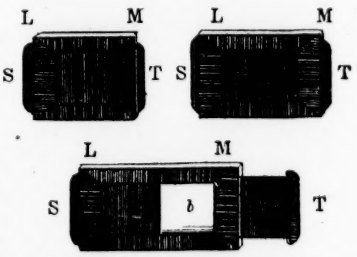
Stereoscope Camera-Box.

As it is much more convenient to take the two stereoscopic Daguerreotypes upon one plate, the following very simply constructed camera-box will be found quite useful.

There is nothing novel or peculiar in the box itself; the tablets however have some claim to originality. For general usefulness there may be three tablets—one for a 1-6 plate, another for a 1-4 plate, and the last for two 1-6 plates or a 1-3 plate.

The box is so contrived that the tablets may enter at one side and pass out at the other.

The long diameter of either tablet is greater than the width of the box. The



above diagram shows that each tablet is furnished with a double shield, made of wood, which meets in the centre. When placed in the camera, and the edge L so adjusted as to be even with the outside of the box, the point *a* will correspond exactly with the centre of the ground glass. The shield, S, being withdrawn, and that portion of the plate exposed the proper length of time, it is to be returned, and the camera moved to the second position.

Then the tablet is to be pushed through, until the edge M be even with the other side of the box, when the point *b* will correspond with the centre of the ground glass.

In a similar manner the remaining portion of the plate is to be exposed by withdrawing the shield T. It is always advisable before exposing the plate for the second view to return the ground glass and see that the same point is adjusted to the centre.

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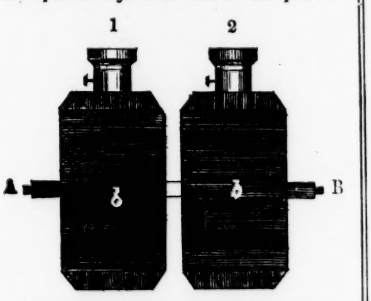
This arrangement will be found very convenient for small pictures for lockets, pins, &c.; as two sittings can be taken on one plate without moving the camera or turning the plate. It is only necessary to adjust the focus to the centre of the ground glass, let the point *a* correspond with that centre, withdraw the slide S, and take one sitting; return the slide, push the tablet through until the point *b* corresponds with the centre, and take the second sitting.

Right and Left.

It is a matter of great importance in stereoscopic Daguerreotypes upon a single plate, to know which should be the right-hand picture, because the relief is governed by their relative positions.

As the ordinary method of taking Daguerreotypes, without a reflector, necessarily reverses every thing, the image taken from the *right-hand* parallel position should fall upon the *left-hand* side of the plate.—



The diagram, representing the two parallel positions of the camera, will assist the operator, and prevent any mistake. Fig. 1 represents the left-hand, and fig. 2 the right-hand parallel position of the camera. A (fig. 1) is the situation of the tablet, receiving the impression of the *left-hand* view of the object upon the *right-hand* side of the plate, at *a*. After the camera has been moved to the second parallel position, agreeably to the rule, the *left-hand* view is taken on the *right-hand* side of the plate. B (fig. 2) represents the tablet receiving this impression at *b*.

NEW ORLEANS, *La.*, April, 1853.

☞ *Photography upon Glass and Paper —Monopolies in the United States.*—Since our last we have had a hearty response from some of our most influential professors and citizens on this subject. We have heard much more, and shall at our earliest opportunity give another article upon this point, setting forth the working of the *twenty-five thousand dollar scheme.*

☞ SEVERAL articles intended for this number have been obliged to stand over; among others, a valuable communication from W. H. HARRINGTON, a review of Mr. Brady's establishment, and Talbot's *process* for photographic engraving. Our readers must bear a little with us at this time, as our attention has been somewhat divided of late.

☞ WE would call attention to Mr. Purneh's advertisement of his Gallery for sale.

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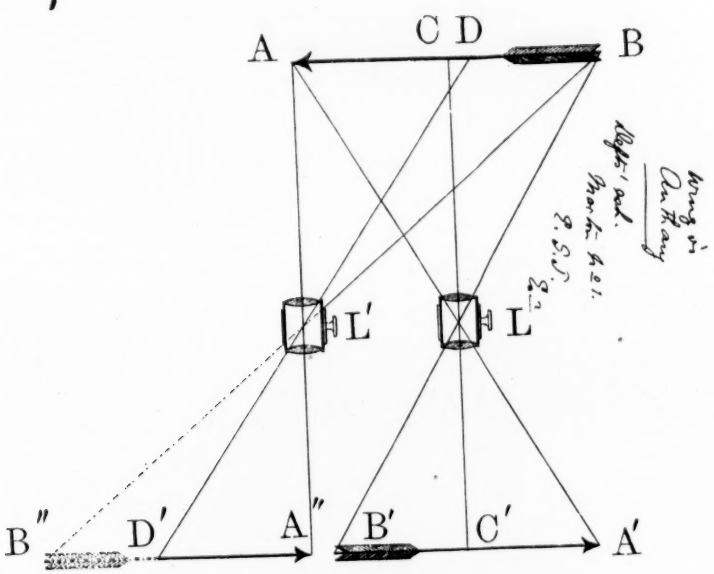

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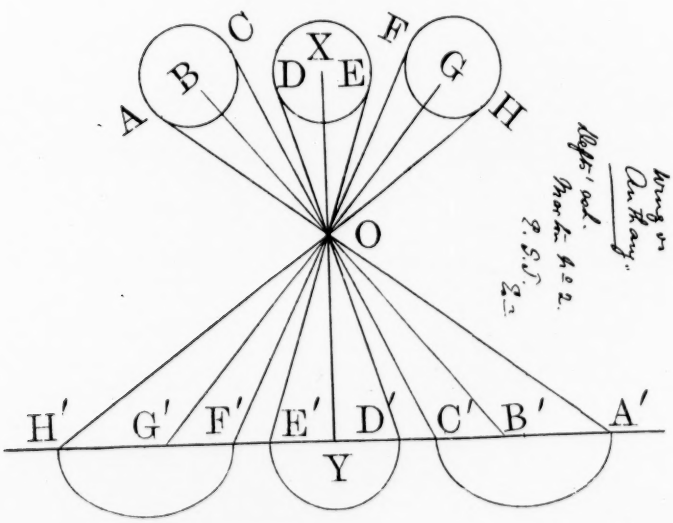

Hing vs Anthony
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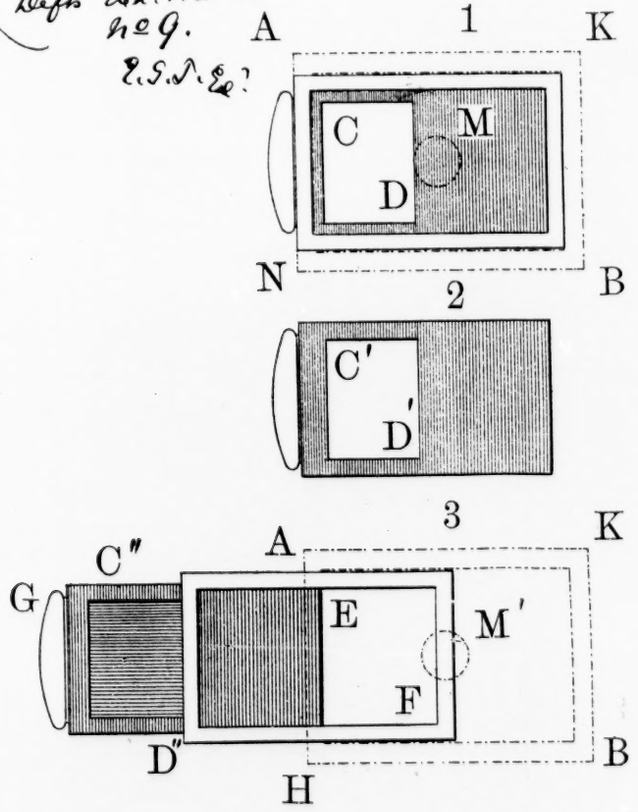
Defts Exh. Morton
No 9.
E.S.N. Esq.



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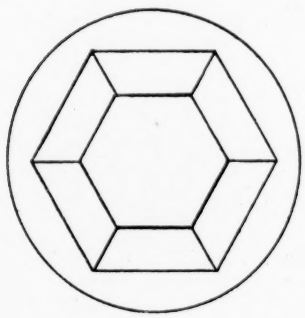
C. S. N. Co.



Wing vs Anthony. Morton 14.
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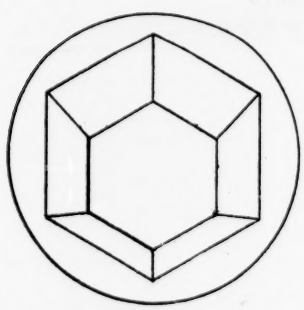

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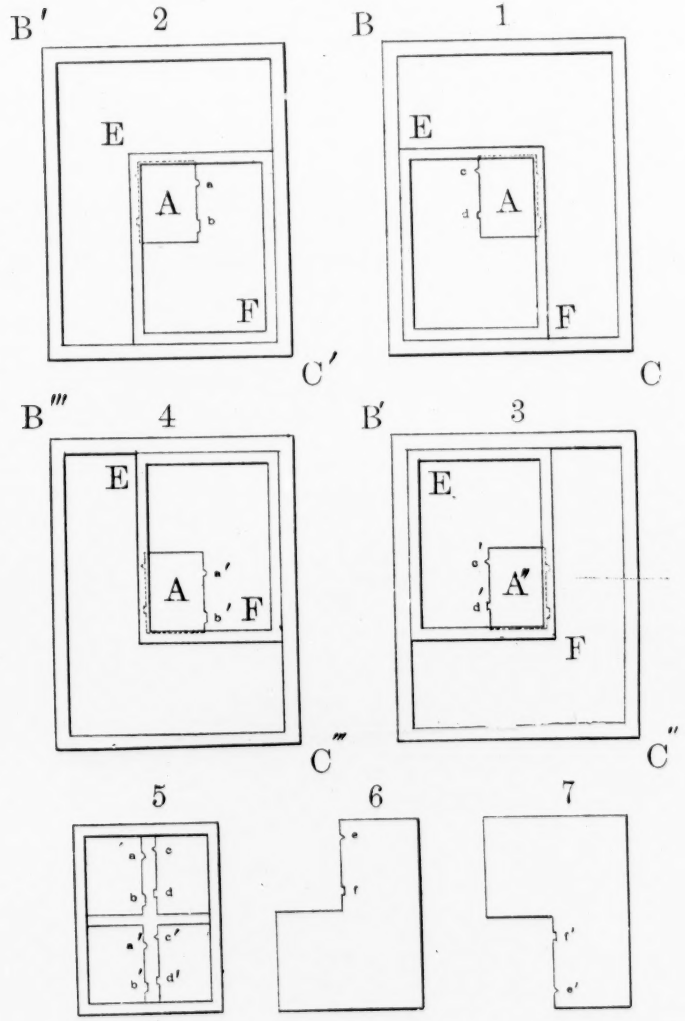
Ringe et al
v.
Anthony et al



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Defendants Exhibit-21
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